1973

FINAL REPORT OF THE
SASKATCHEWAN LEGAL AID COMMITTEE

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TABLE OF CONTENTS

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LETTER OF TRANSMITTAL

TERMS OF REFERENCE

ACKNOWLEDGEMENTS

INTRODUCTION

Chapter I - THE DIFFERENT SYSTEMS UNDER WHICH LEGAL AID MAY BE DELIVERED TO POOR PERSONS.

Chapter II - A SURVEY OF THE SYSTEMS OF LEGAL AID NOW OPERATING IN CANADA, MINNESOTA AND ENGLAND.

Section 1 - The Ontario Legal Aid Scheme

Section 2 - The Alberta Legal Aid Scheme

Section 3 - The British Columbia Legal Aid Scheme

Section 4 - The Manitoba Legal Aid Scheme

Section 5 - The New Brunswick Legal Aid Scheme

Section 6 - The Nova Scotia Legal Aid Scheme

Section 7 - The Quebec Legal Aid Scheme

Section 8 - Legal Aid in Newfoundland, Prince Edward Island and the Northwest Territories

Section 9 - The Minnesota Public Defender System

Section 10- English Legal Aid Scheme

Chapter III - EXISTING PROGRAMS OF LEGAL AID IN SASKATCHEWAN

Section 1 - The Saskatchewan Criminal Legal Aid Plan

Section 2 - Legal Aid Provided by Department of Social Services

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Catalogued

Chapter IV - A REVIEW OF THE SASKATOON LEGAL ASSISTANCE CLINIC, THE PARKDALE COMMUNITY CLINIC, THE DALHOUSIE LEGAL AID CLINIC, CERTAIN CLINICS IN THE STATE OF MINNESOTA AND THE VALLEY LEGAL ASSISTANCE CLINIC

Chapter V - A SUMMARY OF BRIEFS PRESENTED TO THE COMMITTEE

- The Briefs in General
- The Law Society of Saskatchewan Brief
- National Farmers Union Brief
- Royal Canadian Mounted Police "F" Division Brief
- John Howard Society Brief
- Saskatchewan Council of Anti-Poverty Organizations Brief
- Brief from Mr. Garth Cantrill
- Saskatchewan Association of Social Workers Brief
- Metis Society of Saskatchewan Brief
- Brief of the Church in Society Sub-Committee of the Saskatchewan Conference of the United Church of Canada
- The Federation of Saskatchewan Indians Brief
- Yorkton Friendship Centre Brief
- Valley Legal Assistance Clinic Society Brief

Chapter VI - THE NEED FOR A LEGAL ASSISTANCE PROGRAM IN THE NORTHERN PART OF SASKATCHEWAN

Chapter VII - GENERAL CONCLUSIONS

Chapter VIII - RECOMMENDATIONS

Page 1 - General

Page 2 - Central Administration for the Entire Province

Page 4 - The Northern Division

Page 14 - The Southern Division

Page 18 - Implementation of the System in the Southern Division

Page 20 - The Saskatchewan Criminal Legal Aid Plan

Page 21 - Service to Inmates of Penal Institutions

Page 21 - Cost of the Proposed System

Page 22 - Dissent - by Her Honour Judge T. Taylor

Page 24 - Dissent - by J.G. McIntyre, Q.C.

APPENDICES

Appendix I - letter of June 1972 from committee chairman to interested organizations inviting suggestions and assistance.

Appendix II - letter of August 15, 1972, inviting briefs, General information sheet enclosed with above letter

Appendix III - list of organizations and individuals contacted by the committee

Appendix IV - list of briefs and submissions received by the committee

Appendix V - questionnaire form sent to Judges of Magistrates' Court

Appendix VI - questionnaire form sent to practising lawyers in Saskatchewan

Appendix VII - breakdown of the legal aid dollar in Ontario

Appendix VIII - breakdown of persons assisted by legal aid in Ontario 1968-71

Appendix IX - receipts and disbursements under Ontario legal aid plan 1968-71

Appendix X - legal aid fees and disbursements in Ontario from 1968 to 1971

Appendix XI - duty counsel fees paid in Ontario from 1968 to 1971

Appendix XII - amounts paid by the Saskatchewan Department of the Attorney General to practitioners acting under the Saskatchewan Criminal Legal Aid Plan - April 1971 to March 1972

Appendix XIII - caseload of Saskatoon Legal Assistance Clinic

Appendix XIV - copy of report to the Attorney General's Department made by Saskatoon Legal Assistance Clinic

Appendix XV - proposed budget for northern division

Appendix XVI - estimate of number of lawyers required in each clinic in the southern division

Appendix XVII - estimated cost of proposed plan for southern division

SASKATCHEWAN LEGAL AID COMMITTEE

LETTER OF TRANSMITTAL

March , 1973

The Honourable Roy Romanow, Q.C.
Attorney General for Saskatchewan
Legislative Building
Regina, Saskatchewan

Dear Mr. Attorney:

I have the honour to transmit herewith the report of the Saskatchewan Legal Aid Committee, appointed on May 6, 1972, under Order in Council No. 727/72.

Yours faithfully,

R. Carter

Dean Roger Carter, Q.C.
College of Law
University of Saskatchewan

Chairman

SASKATCHEWAN LEGAL AID COMMITTEE

TERMS OF REFERENCE

(a) To review the entire system of legal aid in order to determine the needs of legal aid for the 1970's;

(b) To examine and make recommendations as to the extent of the need for subsidized programs of legal assistance;

(c) To uncover the causes of under-utilization of legal services by the poor, if the evidence suggests such under-utilization;

(d) To articulate pre-conditions for adequate programs such as the criteria of eligibility, personnel requirements, and related matters;

(e) To compare the various systems of organization and delivery of legal aid services to those in need which are now used in other jurisdictions.

ACKNOWLEDGEMENTS

As part of the committee's enquiry, its chairman and one member, together with the secretary of the committee, went to Ontario, Nova Scotia and the State of Minnesota in order to examine the operation of the legal aid programs in each of those jurisdictions. Each visit was extremely useful. In both of the above provinces, and in Minnesota, the chairman and committee member met with the senior administrative officers, as well as others, working in their respective programs. These men and women, without exception, gave most freely of their time in dealing with the various enquiries which were made of them. The committee as a whole wishes to express its real thanks to all of those individuals. Space will only permit the committee to mention a few of them. They include Andrew Lawson, Q.C., David Thomas, Q.C., W.R. Donkin, all of the Ontario Legal Aid Plan; The Honourable Mr. Justice J.W. Brooke, chairman of the Advisory Committee on legal aid in Ontario; Professor Frederick H. Zemans of the Parkdale Community Legal Services Clinic in Toronto; Howard E. Crosby, Q.C., of the Nova Scotia Legal Aid Plan; Professors M. Fraser and I. Cowie, both of the Faculty of Law of the University of Dalhousie; Seton Pollock, Chief Administrator of the English Legal Aid Plan; C. Paul Jones, Public Defender for the State of Minnesota; W. Kalar and R.J. Rawlings, Assistant Public Defenders in Minnesota; Paul Maurino, head of Legal Aid Society of Minneapolis Inc.; G.C. Regnier, secretary of Minnesota State Bar Association; Professor M. Goldberg of the Faculty of Law of the University of Minnesota; and Mr. John Braugh, head of Ramsay County Legal Aid, St. Paul, Minnesota.

The committee also wants to express its thanks to those officers of the Metis Society of Saskatchewan and of the Federation of Saskatchewan

Indians who were of tremendous assistance to the committee in arranging for the meetings which were held with native people in the northern part of Saskatchewan.

The committee found its task to be a most interesting, and it hopes useful, one to perform. This was the result, in large part, of the keen interest which a large number of organizations and individuals took in the committee's work. Chapter V of the report deals with the submissions made to the committee. At this point, however, the members of the committee wish to underscore their thanks to all of the many people who spent a great deal of time, and went to a great deal of trouble, in preparing their submissions and in meeting with the committee to discuss them.

The committee was ably assisted by an excellent staff. Mrs. Gwen Nesbitt carried out all of the heavy stenographic duties connected with the committee's work with great efficiency and patience. Ms. Merrilee Charowsky and Mr. Edward Holgate, both students at the College of Law of the University of Saskatchewan, devoted their summer acting as research assistants to the committee. Both of them made very real contributions to the work of the committee as it proceeded, and in connection with various parts of the final report. Finally, the committee wants to express its thanks to Mr. William Wardell who acted as secretary. He performed his various tasks in an outstanding way.

INTRODUCTION

At the outset of its enquiry, the committee decided that it should get in touch with all organizations in Saskatchewan which might be expected to have some interest in the committee's work, and to invite those organizations to give the committee the benefit of their suggestions as to possible areas of enquiry which the committee might consider following and with respect to relevant materials, or resource persons, which it might look to by way of assistance in its work. As a result, and in June, 1972, a letter went out to these organizations. A copy of it appears as Appendix I. While the response to it was limited, nonetheless the committee did receive some useful suggestions.

In August, 1972, the committee sent a further letter out to the organizations referred to above, as well as to others which had in the meantime come to the attention of the committee as being ones which might be expected to have some interest in its work. This letter specifically suggested the submission of briefs, either formal or informal. A copy of that letter, together with the document referred to in it, appears as Appendix II.

Appendix III lists all of those organizations and individuals receiving the above material.

Appendix IV sets out the organizations and individuals from whom briefs were received.

As part of its survey of the Saskatchewan Criminal Legal Aid Plan, the committee sent a questionnaire to every judge of the Magistrates' Court in Saskatchewan. A copy of it, together with a copy of the letter accompanying the questionnaire, appear as Appendix V. The response to the questionnaire was excellent. The committee wishes to record its thanks to all of the judges

of that bench who went to the time and trouble to complete the questionnaire and thus share with the committee something of their valuable experience in connection with the criminal legal aid plan.

Most of the involvement of the Saskatchewan judiciary in the granting of legal aid under the above plan is at the level of the Magistrate's Court. Notwithstanding this, however, the committee thought it would be useful to circulate a copy of the above questionnaire to every judge of the Court of Appeal, the Court of Queen's Bench and the District Court also. This was done, together with an appropriate letter. Since none of these Courts is immediately concerned with the operation of the criminal legal aid plan the committee had anticipated a limited response only, as was the fact. Nonetheless, the committee received some useful responses. Notable amongst these was a most thoughtful letter from the Chief Justice of Saskatchewan, the Honourable E.M. Culliton. The committee wishes to express its thanks to Mr. Justice Culliton for this.

The committee sent a questionnaire to every member of the Law Society of Saskatchewan. A copy of it, together with its accompanying letter, appear as Appendix VI. A total of 133 lawyers returned the questionnaire to the committee. Again here the committee wants to thank all of those individuals for the trouble they went to in doing this. The results of the questionnaire were of real interest, and use, to the committee.

The committee spent a total of nine days in meetings held for the purpose, initially, of planning the necessary work, and then in discussions leading to its eventual recommendations. Those meetings were held on May 23, July 14, October 17 and 18, December 8 and 9 and 20, 1972, and on January 4 and 25, 1973.

From the early part of June until the following January, the chair-

man and committee staff prepared, and sent out to committee members, volumes of material having to do with various legal aid schemes in Canada and other countries, reporting on investigation trips made by certain committee members and so on.

The committee commenced public hearings in the latter part of August. From then and into September, 1972, a total of four of these hearings were held in the northern part of the province - at Cumberland House, La Ronge, La Loche and Buffalo Narrows.

The following public hearings, duly advertized, were held in the southern part of the province:

Saskatoon - October 5, 1972

Regina - October 19, 1972

Kamsack - October 24, 1972

Prince Albert - October 26, 1972

In addition to the above, the following public meetings were held, at the request of the indicated organizations, and in order to receive, in particular, their submissions:

Regina, October 2, 1972 - Mustard Seed

Regina, October 3, 1972 - Freedom Society and Royal Canadian Mounted Police "F" Division

Saskatoon, October 16, 1972 - Community Health Clinic

Humboldt, October 18, 1972 - Humboldt Improvement Council

Saskatoon, November 15, 1972 - Catholic Family Service Bureau, Friendship Inn and Valley Legal Assistance Clinic Society.

In September, the chairman of the committee together with Mr. S. Halyk and Mr. W. Wardell spent several days in Toronto, Ontario, investigating the operation of the Ontario Legal Aid Scheme. Following that, the chairman and

Her Honour Judge T. Taylor, together with Mr. Wardell, spent two days in Halifax, Nova Scotia, meeting with persons concerned with the Nova Scotia Legal Aid Plan. At the end of September, the chairman together with Mrs. Margery Heath and Mr. Wardell spent two days in Minneapolis, Minnesota, examining the operation of the Public Defender System in that state, as well as the operation of several "clinic type" undertakings carried on in the above city and in St. Paul.

Two matters remain to be commented on. The first has to do with terminology used in this report. Throughout, the committee uses the term "poor person" to describe the potential clientele of a legal aid system. It has, that is, avoided euphemisms such as "economically deprived persons", "disadvantaged persons" and so on. It has been brought to the attention of the committee that a small handful of people find the term which the committee uses offensive. Indeed, at the outset of the committee's work in May, in referring to the clientele of a legal aid scheme the committee referred to "citizens who are financially unable to secure (legal services) in the ordinary way". As its work proceeded the committee found that it was able to reach out, in a significant way, to organizations representing the potential clientele of a legal aid system and in quite a number of instances to meet, indeed, with that very type of person. The committee then found - and the point was on occasion somewhat forcibly made - that these organizations and individuals far preferred to use the term "poor person". In the result, the committee decided to join with them in calling "a spade a spade".

The other matter which the committee wants to comment on has to do, in a very general way, with the whole of its enquiry and all of its work. This committee has, of course, been preceded by a number of other similar committees in other Canadian provinces. None of them has had the advantages

of this committee. One of those advantages is the recent emergence of organizations formed by poor persons themselves and which are vigorously pressing for the improvement of the lot of their members. The committee received forceful submissions from such organizations. Amongst other things, those submissions made the committee aware of many matters which, otherwise, might well have been unnoticed. The other advantage is the fact that, again within the last short while, there have been new developments in Canada with respect to the delivery systems by which legal aid may be made available to poor persons. In this connection the committee has had the advantage of most useful insights into the operations of the Saskatoon Legal Assistance Clinic, the Parkdale Community Clinic in Toronto, Ontario, the Dalhousie Legal Aid Clinic in Halifax, and the Valley Legal Assistance Clinic operating out of Duck Lake, Saskatchewan. A survey of the operation of these clinics appears in Chapter IV of this report.

Finally, it should be noted that the materials contained in this report, and on which the report is based, are as they stood in December, 1972. As far as the committee is aware, however, there have not been any developments of real significance relating to any of the matters reported on between that month and the date of this report.

Chapter I

THE DIFFERENT SYSTEMS UNDER WHICH LEGAL AID MAY BE DELIVERED TO POOR PERSONS

Throughout the North American continent and in England, different approaches have been taken in delivering legal services to poor persons. Fundamentally, the difference between them is that, on the one hand, certain systems involve the employment, at public expense, of full-time professional persons to provide the services, while on the other hand certain systems provide legal services by private practitioners on a fee-for-service basis.

THE "SALARIED SYSTEMS"

A. The Neighbourhood Legal Clinic

Under this system, local clinics will be set up with offices located in low income areas. The general policy, and management, of the clinic will be set by some type of board of directors which will include representatives of the clientele, or their organizations, served by the clinic. The board will have the responsibility of hiring the professional staff. This will include the appointment of a lawyer as the Executive Director of the clinic. His position will be somewhat analogous to that of the senior partner in a ordinary law firm. He, that is, will have professional responsibility for the management of the business and affairs of the clinic. Normally, the Executive Director will himself be a member of the board of directors and will have considerable influence, at least, in the hiring of other professional people to work in the undertaking.

On this continent, at least, this type of approach had it genesis in the United States of America. That background was summarized in the following

portion of the brief presented to the committee by the Saskatoon Legal Assistance Clinic Society:

> "But you ask what role can lawyers play in remedying the plight of the poor? So long as you define poverty strictly in economic terms, the answer becomes no role at all. But if you identify poverty by its other symptoms which are disenfranchisement and dependency, there is a role. That role has recently come to be played in North America in the context of neighbourhood or community legal service programs. The theoretical framework of the first few pilot neighbourhood legal services offices in the United States was provided by Edgar and Jean Cahn. The money was provided by President Lyndon Johnson. In 1964, President Johnson declared war on poverty. Massive appropriations were passed by congress to fund this war to be fought under the banner of the Economic Opportunity Act of 1964. It is to the credit of the Cahns that they were able to persuade those who had the ear of the president that one of the fronts on which the war on poverty had to be fought was the front of justice. Thus, neighbourhood legal services became an adjunct of the war on poverty.
>
> The Cahns took as their major premise the assumption that there was a desperate need for supplying impoverished communities the means with which to represent the felt needs of their members. Thus, the thrust of the Cahns' design was not simply the production of a scheme to provide access to lawyers for poor people. The model developed by the Cahns and labeled by them the neighbourhood or community law firm was developed to provide the opportunity, the orientation, and the training to stimulate self-reliance and leadership among the ranks of the poor."

It is implicit in the foregoing quotation that the function of a neighbourhood clinic will not be limited to a provision of traditional legal services. That function will extend to embrace various educational programs designed to acquaint poor persons with the law, particularly those various aspects of it which have a particular impact on the kinds of problems usually faced by them. The aim of this aspect of the clinic's operation will be to achieve some degree of self-reliance on the part of poor persons. Included in the function will also be what can be called "law reform activity". That is, under the clinic system it will be anticipated that the staff lawyers will, on occasion, become aware of problems shared in common by many of their clientele

which will suggest that relief might best be secured by appropriate approaches being made to government at one level or another or, it may be, through some type of class, or group, action in the courts.

In recent years this system has been adopted in certain parts of Canada. Chapter IV of this report discusses the most significant of the clinic operations now underway in this country. In addition, and as will be seen in Chapter II of this report, the province of Quebec and Nova Scotia have adopted this approach in making provision for a comprehensive legal aid scheme at public expense.

B. Public Defender

This system again originated in the United States of America. It is limited to the provision of legal aid to poor persons who face criminal charges. Basically, under these systems the services of counsel will be provided by full-time, salaried staff lawyers. (On occasion, private practitioners may play this role on the basis of an annual retainer paid to them out of public funds.)

The only parallel which can be drawn between the public defender and the clinic approach is that, in both cases, lawyers are paid at public expense. From that point on, however, there are the following fundamental differences:

(1) The public defender office limits its services to criminal matters. The clinic is available for a comprehensive range of legal services.

(2) There is no attempt, with the public defender office, to achieve any degree of local, or community, control over its management or operation.

(3) It is no part of the philosophy of the public defender approach to engage in programs of public education or of law reform activity on behalf of poor persons and their organizations.

The only Canadian province which has adopted this approach is Quebec. For some little time, a limited public defender service has been operating in the major urban centres in that province.

By reputation, the best example of a public defender system is to be found in the State of Minnesota. A survey of that system is to be found in Chapter II of this report.

NON-SALARIED (OR "FEE FOR SERVICE") SYSTEMS

Under these systems, the existing structure by which legal services are delivered - namely, the private Bar - will be utilized to provide assistance for poor persons. The private practitioner will be paid for his services on the basis of a tariff which, most commonly, will be intended to reflect what a "man of modest means", able to retain his own lawyer in the usual way, might be expected to pay for the services rendered. There are two variants of this approach:

(a) Free Choice - Under this system a client found eligible for legal aid will then be free to select the lawyer whom he wishes to engage, or consult, from a panel of lawyers who have earlier indicated that they are ready to act within the legal aid system.

In Canada, the most notable example of a legal aid scheme structured on this basis is to be found in Ontario. New Brunswick has followed suit. Also, the Manitoba legal aid plan basically involves the free choice system.

(b) Assigned Counsel - In this type of system the legally aided client will be referred, by some central office, to a private practitioner whose name appears on a panel of lawyers ready to provide services under the scheme, the lawyer being selected, however, by the central office on a rot-

ation basis. In that sense, the client will be "assigned" to the particular lawyer involved.

The legal aid plan operating in the province of Alberta adopts this system.

In those provinces of Canada where one or other of the above systems are used, the administration of the legal aid plan is vested in the provincial law society - save for Manitoba, where, by statute, a separate corporation has been established to administer its scheme.

Chapter II

SECTION 1 - THE ONTARIO LEGAL AID SCHEME

GENERAL

This province was the first in Canada to provide a comprehensive legal aid plan for poor persons. The enabling statute (now The Legal Aid Act, R.S.O., 1970, c. 239) was passed in 1966. The plan commenced to operate on March 29, 1967.

The legislation provides for the delivery of legal services to poor persons by the private practicing bar in Ontario, on a fee for service basis. As later noted in this chapter, that generalization is subject to minor qualification. Since the inception of the plan, there has been some call for the establishment of legal aid clinics. To some extent that call has been answered.

The Law Society of Upper Canada is the agency charged, by the Act, with the entire administration of the program. Subject to the approval of the Attorney General, the Society appoints a Director of Legal Aid for the province. He is the chief executive officer of the plan, and is responsible for over-all administration.

The statute requires the Society, each year, to submit a report to the Attorney General on the operation of the plan. In addition, the Act provides for an Advisory Committee on Legal Aid. It is composed of a judge of the Ontario Supreme Court, a judge of a County Court, a magistrate, two members of the Ontario Bar and a person holding "a responsible position in the field of public welfare". This committee is also required to submit annual reports to the Attorney General covering the operation of the plan, and commenting on the annual reports submitted by the Society to the Attorney General.

ADMINISTRATIVE STRUCTURE

The province is divided into areas. Each has an area director, appointed appointed by the Society. To assist him, there is an area committee. Each of these is to consist of five or more members, a majority of whom must be members of the Law Society. Others, however, may be drawn from the local community.

The area committees are responsible for administering legal aid in their geographical district. The area director makes the routine decisions with respect to the operation of the plan. The area committee handles appeals from decisions of the area director refusing legal aid. A further appeal lies to the provincial director.

York County is the largest area in the province. Both the area director and his assistant, in that county, are employed full-time. In two other areas, the deputy director is full-time, while the director himself is not. The other area directors are all part-time and are paid according to time spent in administering legal aid in their districts.

FINANCIAL ELIGIBILITY

The Legal Aid Act requires that, before a person can receive legal assistance, he must first secure a certificate from an area director's office before he can then retain the lawyer of his choice to act for him. Before a certificate can issue, it must first be determined that the individual is financially eligible. This section deals with the assessment of that matter.

Basically, an area director must refer an applicant for legal aid to an assessment officer of the Ontario Department of Social and Family Services, to determine eligibility, before a certificate authorizing legal aid can be granted. There are two exceptions to this. A provisional certificate can be granted by the area director, without prior assessment, if legal aid is urgent

In such case, a permanent certificate must later be obtained, with an appropriate assessment. Further, an assessment is not required if the necessary aid is estimated to cost not more than $60.00. In that class of case, an area director, after satisfying himself that the applicant cannot pay all or any part of the cost of the assistance, can grant a certificate allowing up to $60.00 worth of legal assistance, without assessment. If more is required, an interview with an assessment officer is necessary in order to obtain a permanent certificate. The only other aid that can be received, under the plan, without a certificate or provisional certificate is that rendered by duty counsel. (These functionaries are dealt with later.)

An assessment officer applies a needs test, rather than a means test, in his interview with the applicant. He is governed by the following provision in the statute:

> "The assessment officer to whom an application is referred shall consider the income, disposable capital, indebtedness, requirements of persons dependent on the applicant, and such other circumstances as he deems to be relevant that are disclosed in the application or that he ascertains after investigation, and he shall report to the area director as to whether the applicant can pay no part, some part or the whole of the cost of the legal aid applied for and the sum, if any, the applicant is able to contribute towards the cost thereof."

GRANTING A CERTIFICATE

The area director has final discretionary power (subject to an appeal to the area committee) to grant an application. As earlier noted, the Ontario plan adopts the approach that legal services are to be rendered by private practitioners, on a fee for service basis. That being so, an area director will refuse a certificate in the event that he concludes that the cost of fee for

service legal aid would exceed, in financial terms or otherwise, the value of the result which the legal aid applicant desires. In other words, the Ontario plan does not service "uneconomic cases".

When an applicant has been granted a certificate, he then chooses the lawyer whom he wishes to act for him from a panel. These panels are maintained by the Law Society and lists those lawyers who are willing to take legal aid cases in the areas of civil litigation, civil advice, criminal litigation and criminal advice.

The lawyer contacted by the applicant is free to accept or refuse the client. The statute provides, however, that no practitioner can handle more than 75 legal aid cases per year.

With respect to criminal matters, the statute and regulations limit the granting of a certificate to a trial in a magistrate's court (unless, under the law, the magistrate has no jurisdiction to try the offence). The legally aided client can only secure a trial in a higher court (with the magistrate merely holding a preliminary enquiry) where his counsel certifies to the area director that, in the best interests of his client, trial by a higher court is necessary. This provision has been adopted in an attempt to control costs.

The Act makes provision for payment in advance by clients who are determined capable of paying some part of their legal costs. The administrative policy of the Law Society with respect to civil matters, in this connection, is as follows:

> "Where the area director finds that a contribution can be made by the applicant he shall, before the civil certificate is issued, require that 1/3 of such contribution or such lesser or greater amount be paid provided he is of the opinion that serious hardship or prejudice will not result to the applicant or his cause."

COVERAGE UNDER THE PLAN

Provided the applicant is financially eligible, legal aid is granted as of right with respect to any proceedings in the Ontario Supreme Court (comparable to the Saskatchewan Court of Queen's Bench and Court of Appeal) in the County, or District, Court and in Surrogate Court.

Legal aid is also provided as of right when the applicant is charged with an indictable offence, where an application is made for a sentence of preventive detention, and where proceedings are taken under the Extradition Act for the Fugitive Offenders Act, or in the Federal Court of Canada.

Subject to the discretion of the area director, legal aid may be issued to a person in any summary conviction matter under federal or provincial legislation, or municipal bylaw, if there is a likelihood of imprisonment or loss of means of earning a livelihood. Legal aid in Juvenile, Family Court and Small Claims Court are all discretionary, as are appearances before an administrative agency. Legal aid in bankruptcy proceedings, and in proceedings for contempt of court, or for work that is usually performed by a solicitor (including, of course, advice) is also discretionary in the hands of the committee.

With the approval of an area legal aid committee, an appeal can be taken to the Ontario Court of Appeal or the Supreme Court of Canada.

The Act excludes actions in respect of defamation, proceedings concerning elections and certain archaic, or unusual, actions from legal aid.

The regulations substantially exclude any possibility of legal aid for representative (or class) actions.

The area of divorce has caused concern to the administrators of the Ontario plan. In dealing with this matter, the Law Society, in its 1971 annual report to the Attorney General, said:

"The 5,521 divorce cases completed in the 4th fiscal year cost $2,750,837.00 whereas the 4,077 divorce cases in the previous year cost $1,898,344.00. In the 2nd year of the plan's operations $646,339.00 was spent on 1,613 divorce cases."

In an attempt to deal with this cost problem, the Law Society has established new criteria. They require an area director not to issue a certificate for a proposed divorce action in the following cases (unless there are most unusual circumstances):

"1. Where the applicant is unemployed but is employable and may have sufficient income if employed to obtain his or her own divorce.
2. To defend a divorce where the dispute is with respect to costs only, unless the petitioner is not legally aided.
3. Where the applicant can pay $25 per month - he or she should be asked to consult a lawyer first.
4. Where the applicant has not demonstrated an immediate need at the time of application.
5. Where the applicant has present plans to remarry and demonstrates an immediate need but could, with reasonable management of his or her financial affairs, pay for his or her own divorce within a reasonable time.
6. Where the applicant intends to remarry and his or her intended spouse is possessed of sufficient means to pay for the divorce.
7. Where the applicant has grounds for divorce and while having such grounds had sufficient means to pay for the divorce but has spent the money on luxuries, i.e. clothes, travel, colour T.V., etc."

In addition to the above, the Law Society recently reduced the amount payable for an uncontested divorce, to the private practitioner handling it, from $500 to $400 with respect to a legally aided case. The main emphasis, however, in attempting to control costs in this area, has been to restrict the granting of divorce certificates under the legal aid plan. In that connection, the Law Society in its 1971 annual report said:

> "The Sub-Committee (of the Legal Aid Committee appointed to investigate the legal aid tariff) in its deliberations was mindful that they did not wish to do a disservice to the public or to the legal aid plan by reducing the tariff to an amount which would result in dissuading solicitors from taking legal aid divorce actions."

Recently, the Law Society authorized a pilot project to be undertaken in the Ottawa area in handling undefended divorce actions. Briefly, the project called for all of the documentary work in connection with such case to be prepared in the area director's office. At the hearing of the cases, duty counsel then appeared on behalf of all plaintiffs. The cost of processing divorce actions in this way was approximately $144 per case. It is not known, at the present time, whether the Law Society will be taking any steps based on the results of this project.

DUTY COUNSEL

These are private practitioners, appointed by the week and paid at an hourly rate. They give advice to accused persons, whether imprisoned or not, about their legal rights, and take such steps as the circumstances require to protect the accused's rights including representing him on an application for remand or adjournment, on applications for bail or entering a plea of guilty.

It seems that the original intention was to have duty counsel handle nothing more elaborate than guilty pleas. It has been found more practical, however, in some areas where there are few lawyers, to allow duty counsel to handle more extensive matters.

Before duty counsel can act, he must be satisfied that:

1. The accused would qualify for free legal aid, without being required to contribute to the cost.
2. The offence is a comparatively minor one and can be properly

and quickly tried that day, or on another day during the period for which the duty counsel is serving.

3. It would be in the best interests of the accused and the proper administration of justice for duty counsel to conduct the defence.

4. Duty counsel has advised the accused with respect to his right to obtain a lawyer of his own choice under a certificate, and the accused after being so advised has expressly requested duty counsel to act for him.

CLINICS

The Ontario Act intends that, basically, a person requiring legal assistance will first secure a certificate, and then select the lawyer, in the practicing bar, whom he wants to consult or have act for him. Over the last several years, however, and from a variety of sources, there has been pressure for the institution of some kind of clinic approach in the delivery system under the plan. As an example of this, the Advisory Committee on Legal Aid, in its 1970 report to the Attorney General, said:

> "Because of our conviction that there is a special need to provide assistance for the poor and the apparent success of the community law offices or clinics which we visited (in New York City), we believe a comparable program should be considered for Ontario.
>
> "It is our opinion that the Law Society should consider as a part of the Legal Aid Plan the use of a community law program which will provide community counselling and carry the law to the poor."

In response to suggestions such as the above, the Ontario Plan has been experimenting, in the last two years, with evening legal aid clinics, staffed with duty counsel paid by the hour. This has amounted to an attempt to reach poor persons whom it is felt the plan was not servicing. These clinics have been held at locations more easily accessible to applicants for legal aid than down-town lawyers' offices, and psychologically more suitable than, perhaps,

an average lawyer's office may be.

In this connection, a three month pilot project was established, in Ottawa, commencing April 6, 1971. It operated Tuesday evenings and Wednesday afternoons. As well as duty counsel, representatives of various community social services, and social workers, were present.

The above clinic offered summary advice and assistance. In any matter of any significance, it referred the individual on to the ordinary administrative structure of the plan. Notwithstanding this somewhat limited area of operation, the Ottawa area director, in his report on the project, strongly urged the expansion of this kind of activity. His report read in part:

> "It is apparent (from the project) that the problems of the people are both of a legal and social nature. It would appear that a solicitor who is well informed of the community resources is the proper person to advise these people. .... I would suggest we give to the needy people the benefit of the doubt, that they may not get proper advice if clinics were not available. The Ontario legal aid plan can offer a still greater service to the people by use of these clinics."

In addition to the above, four community clinics, with a similar kind of operation, were established in Toronto by the Society in June 1971. Also, there are presently five community legal aid clinics operating in Carleton County.

Speaking of these clinics, the Advisory Committee on Legal Aid, in its 1970 annual report, said:

> "The purpose of these clinics may be summarized as:
> i. To provide readily accessible summary legal advice in designated areas where people are already seeking some form of social service or public assistance;
> ii. To obtain accurate information concerning (a) the range of problems encountered by the poor which may be alleviated by some form of legal redress or the timely assistance of a lawyer,

and (b) to quantitatively measure any unmet legal need thus characterized, with a view to determining the most effective form of future initiatives of this kind."

There has been a further, and recent, development in this area. This involves certain of the recommendations made by a special sub-committee appointed by the Legal Aid Committee of the Law Society of Upper Canada. The sub-committee was appointed in November, 1971, and instructed to undertake a review of the effectiveness of the Ontario plan in civil matters. It reported to the Law Society on August 18, 1972. In dealing with the fact that, to some extent at least, poor persons in Ontario do not have sufficient, or appropriate, access to the plan, it made a number of recommendations. One of them is that, in order to improve access, a clinic should be set up by the Law Society "in those localities where its utility is evident". The committee lists the following "essential characteristics" of the kind of clinic which it has in mind:

"(a) scope of service:

(i) provision for immediate access to advice and summary legal assistance,

(ii) provision for continuing assistance in matters of a more substantial nature if required.

(b) structure:

(i) preservation of the applicant's freedom of choice of counsel in all matters of an extensive or continuing nature,

(ii) provision for maximum participation by the practicing bar and minimum involvement of salaried personnel to avoid progressive institutionalization of the plan.

(c) function:

(i) to encourage lawyers to permanently locate in concentrated (urban) areas of need and to avoid competing with them,

(ii) to immediately provide for more ready access by low income individuals to participating solicitors in a manner that can be effectively advertised,

(iii) to improve liaison between the profession on the one hand and the intended beneficiaries of legal aid and complementary social services on the other.

It is to be noted that the above structure would only permit a neighbourhood legal aid clinic to operate within a narrow frame of reference. That is, minor matters only would be dealt with. Presumably, however, this would permit some service to be extended to poor persons in cases where, under a fee for service approach, the problem involved would be uneconomic to handle in the ordinary way under the Ontario plan. Any case of significance (presumably the "economic" ones) would be left to be handled by a private practitioner, after the individual had secured the necessary certificate permitting aid to be given.

DELIVERY OF SERVICES IN REMOTE AREAS

The Advisory Committee has outlined some of the problems encountered with the Ontario plan in northern Ontario. Thus, in one of its reports, it had the following to say, in part:

> "We find that while legal aid has been able to provide assistance for the Indian people, in criminal cases, from even the most remote areas, after they have been taken into custody, it has been most difficult to bring to their attention the fact that legal aid is available to them in either criminal or civil cases or to offer appropriate service in counselling in civil matters. .... We are advised that not infrequently advice is needed on matters relating to welfare entitlement and there is a growing indication of need for counselling on matters relating to family law. .... There has been no organized attempt as yet to explain legal aid to Indian Band Councils and nothing has been prepared for them in their native tongue.
>
> ... We gained the impression that there is generally a reluctance on the part of these people to seek advice, probably because of embarrassment.
>
> ... Communication with the Indian people is vital if the plan is to serve them. We formed the opinion that the best means of communication and that through which a great deal could be accom-

> plished is in both adult and youth education programmes ... We also think that there is some merit in the suggested use of mobile clinics. However, it is quite obvious, having regard to the special language and cultural issues, that trained personnel would be required for this task."

STUDENT LEGAL AID

Provision is made in the statute for student legal aid societies. These may be constituted by any law school in Ontario. It seems that their work is largely confined to handling cases where a certificate has been refused, on the ground that the case is "uneconomic". That is, refused because the cost of fee for service legal assistance by a private practitioner outweighs the financial value, so judged by the area director, to the applicant. These societies cannot be compared, accordingly, to student clinics such as those found at the law schools of Dalhousie, Osgoode and Saskatchewan.

COSTS OF THE PLAN

Appendices VII, VIII, IX, X and XI deal with the costs of the Ontario plan. They are drawn from the 1971 annual report of The Law Society of Upper Canada on the operation of the scheme. Each is self-explanatory. Some comment, however, can be made with respect to them.

Appendix VII, amongst other things, shows that in 1971 a total of 69¢ out of each dollar spent under the plan went for fees and disbursements in criminal and divorce litigation. It is to be noted that this sum has been creeping upwards in the past three years. It was 64¢ in 1969, 66¢ in 1970.

Appendix IX shows the total cost, insofar as the Law Society is concerned, of the operation of the plan in each year since 1968. It will be seen that the cost in that first year was $4,079,818.76, and that it increased

in 1971 to $10,736,951.43. Those figures do not, however, represent the entire cost to the province of the operation of the legal aid plan. As noted earlier in this chapter, the Law Society does not carry out the assessment of each applicant for legal aid. That task is carried on by the Department of Social and Family Services. The cost of assessment is to be found, accordingly, in its financial reports rather than in the report of the Law Society. The committee was advised by that Department that in 1971 the total cost, across the province, of carrying out all assessments was $500,000.00. In the result, the full cost in that year of the operation of the legal aid scheme was $11,236,951.43. Based on the 1971 census figures for Ontario, this works out to a cost of $1.46 per capita.

THE TARIFF

Practitioners accepting legal aid clients bill for their work in accordance with a special tariff set by the Law Society. The statute provides that the practitioner is to be paid 75% of the total fees arrived at under this tariff. In addition he is paid his out-of-pocket disbursements in full.

The tariff is intended to reflect what the "man of modest means" would be charged by a private practicing lawyer for the services rendered by him.

Recently there have been a number of complaints from practitioners that the tariff is too low. Currently, the Law Society is examining this matter with a view to a possible upward revision of the tariff.

GENERAL COMMENTS

The chairman of the committee, together with a number of its members and its secretary, spent three days in Toronto examining various aspects of

the operation of the Ontario legal aid plan. Amongst other things, they were able to attend parts of a meeting, held at the time, of all area directors in the province. In addition, they spent considerable time with senior administrative officers of the plan. One entire afternoon was taken up in examining the work of the York County area director's office.

The members of the committee who visited in Toronto were very impressed indeed with the calibre, and dedication, of the various administrative officials whom they met, and talked with. In significant part, this was contributed to by the clear impression which the committee members formed that all of those concerned with the administration of the Ontario scheme regarded it as their function to see to the delivery of legal aid to the underprivileged as a matter of right, and not a matter of charity. This attitude was shared by the Benchers of the Law Society of Upper Canada whom the committee members met with. Tied in with this approach is a clear determination to see to it that the plan works well.

As with any such scheme, the Ontario plan is not above criticism. It is obvious from earlier portions of this chapter that, for one thing, the plan is a costly one to the taxpayers of the province. Having made that point, however, it must be kept in mind that cost is not the only, and not the most essential, criterion by which the adequacy and desirability of any legal aid scheme is to be judged. Indeed, it is probably better to regard it as an ugly fact of life which cannot be ignored in considering a legal aid scheme, rather than as any sort of a criterion on which to assess it.

A real criticism lies in the fact that the Ontario plan is heavily oriented towards litigation, both civil and criminal, rather than advice and assistance falling short of, or not involving, court proceedings. It is in that latter area, that one finds the most fruitful fields for preventive law, and

law reform activity. The 1971 annual report of the Law Society illustrates the above noted tendency. In the year covered by the report, a total of 35,129 cases involving criminal or civil proceedings were handled, compared to a total of 2,092 cases involving "legal advice". This difference in emphasis is also shown in the total fees and disbursements paid out in 1971. For proceedings, both criminal and civil, the total was $7,602,490.00, whereas $81,018.00 only was paid out to practitioners for "legal advice".

The same tendency is shown in Appendix VII, to this chapter of the committee's report. In 1971, out of every dollar spent by the plan, 69¢ went for litigation in the areas of criminal law and divorce cases only.

Another criticism involves the fact that the structure of the Ontario plan does not permit "uneconomic cases" to be handled. This class of case has been referred to earlier in this chapter. It involves the situation where an area director judges, in his discretion, that the value of the end sought by the applicant for legal aid is not sufficient to justify the expense of a lawyer being retained, on a fee for service basis, to assist the client in achieving it. The problem here is that a poor person may, not uncommonly, have a claim which will be of real importance to him, but which would not be of significance to a middle class client who would have to pay for his legal services in the ordinary way. Thus, the recovery of a debt owing to a poor person of, say, $50.00 may be of real importance to him, where his middle class counterpart would never think of retaining a lawyer from the private bar to litigate it for him in small claims court, since the fee which the practitioner would have to charge would be prohibitive. Another example might well involve a poor person with a claim arising under social aid legislation for, perhaps, some contribution towards certain of his expenses in the category of "special needs". Again here, it would seem that the Ontario plan would not be able to help that applicant. Many

tenant problems, debtor problems, workmen's compensation claims, unemployment insurance claims and other matters which poor persons are perhaps commonly concerned with will not, it seems, be serviced in Ontario because of the nature of the plan. While the statement is a bit unfair, the entire situation on this point might be summed up by saying that the Ontario plan provides legal aid only to the poor person who has a middle class legal problem.

A further criticism of the Ontario plan involves the fact that no provision is made for any kind of an educational program amongst the poorer section of the community. Nor does it make specific provision for any organized law reform activity. If one accepts the proposition that a legal aid scheme can, on occasion, act as a vehicle for social change then these are, indeed, gaps in the Ontario scheme.

Concern has been expressed in some quarters, during the years in which the Ontario plan has been operating, that it does not reach out sufficiently to the poor communities in the province. As noted earlier in this chapter, the Advisory Committee on Legal Aid has, for one, expressed reservations about the sufficiency of the plan in this connection. Hence its suggestion that the Ontario authorities consider the use of clinics.

The committee has earlier commented, in this chapter, on the report of the special sub-committee set up by the Legal Aid Committee of the Law Society, and has noted its recommendations with respect to the use of the clinic model by the plan. One cannot help but wonder, however, whether such a model will significantly assist in solving the problem. For one thing, it does not appear that the kind of clinic which this sub-committee recommends would have any active role to play in the fields of education and law reform. Further, it appears that these clinics would, in large part, merely act as referral centres through which applicants for legal aid certificates would pass on their way to an appropriate

area director's office. Apart from this, only summary advice would be given. Such a limited range of activity is a far cry from the services provided to poor persons by the Saskatoon Legal Assistance Clinic, the Dalhousie Clinic and the Parkdale Community Clinic.

SECTION 2 - THE ALBERTA LEGAL AID SCHEME

GENERAL

The Alberta legal aid plan commenced operation on April 1, 1971. The legislative base for the scheme is to be found in the following provisions of the Legal Profession Act of the province (R.S.A. 1970, c. 203):

> "(1) Subject to the approval of the Lieutenant Governor in council, the Attorney General and the Society may enter into an agreement respecting the operation by the Society of a plan to provide legal aid to persons in need thereof in civil matters or criminal matters or both.
>
> (2) An agreement under this section may provide for the following:
>
> (a) the rules respecting the operation of the plan to be made by the Benchers pursuant to section 6, subsection (2), clause (h);
>
> (b) the establishment of a board, committee or other body to administer the plan consisting of persons nominated by the Attorney General and by the Benchers;
>
> (c) the payment by the Government to the Society of moneys for the purpose of the plan, to be paid from funds appropriated by the Legislature for that purpose;
>
> (d) the appointment by the Benchers of a director or chief executive officer for the plan;
>
> (e) any other matters pertaining to the establishment or operation of the plan."

Under date of July 1, 1970, the Attorney General for Alberta and the Law Society of that province entered into the agreement contemplated by the above statutory provision.

The plan operates under what may be called the "assigned counsel" system. With the exception of a relatively small role played by students at the law school of the University of Alberta, the plan relies solely on barristers engaged in private practice to provide the services required. They are paid on a fee-for-service basis. In its operation, however, this does not leave the

legally aided client with the right of free choice. Rather, cases are assigned to privately practicing lawyers on a "roster system". Lawyers, accordingly, are rotated. The purpose of this approach is to attempt to see to it that particular lawyers are not over-burdened with legally aided cases. It is also part of the philosophy of the scheme that, via this method, it should not be possible for a practitioner to rely too heavily, in his practice, on cases of this type.

ADMINISTRATIVE STRUCTURE

The above agreement appoints the Law Society of Alberta as the agency "to establish, maintain and operate" the legal aid plan and to provide the necessary legal services for it. Accordingly, the agreement provides that the Society is to receive the annual amounts appropriated by the Alberta legislature to finance the scheme.

The Law Society, under the agreement, appoints the provincial Director of Legal Aid and provides him with necessary staff and accommodation. This appointee is the chief executive officer of the plan.

The agreement calls for an appointment of a Joint Legal Aid Committee of seven members. Its task is to "determine the over-all policy of the plan, to appoint Regional Legal Aid Committees, and to hear and decide appeals against refusals to grant certificates for legal aid." Currently, there are eight lawyers on this committee, one professor of law, one judge of the Supreme Court of Alberta and a chartered accountant.

Basically, there is a Regional Legal Aid Committee for each of the twelve judicial districts in the province (the districts of Drumheller and Hanna being combined with Calgary). The chairman of each of these committees is a lawyer. Except for Edmonton and Calgary, the secretary to the committee

is the clerk of the court in the particular judicial district, or one of his deputies. In Edmonton, the Director of Legal Aid serves as secretary. The Deputy Director of Legal Aid, who is located in Calgary, acts as secretary of the Regional Committee in that city. In main part, the members of these committees are lawyers, although an attempt is currently being made to increase the number of lay people serving on them.

The duties of the Regional Legal Aid Committees are (1) to deal with all applications for legal aid in its district, and (2) to issue certificates (a committee may delegate this function to its secretary). Where the granting of a certificate has been delegated to a secretary, the applicant may appeal a refusal to the Regional Committee, and thereafter to the Director, with a right of final appeal to the provincial Joint Committee. Where the Regional Committee retains the power to issue certificates then a refusal may then be appealed to the Director, and from him to the Joint Committee.

The above agreement gives to the provincial Director wide powers, permitting him to oversee the day-to-day operation of the legal aid plan.

ELIGIBILITY FOR LEGAL AID

The above noted agreement covers this matter in its definition of a "qualified applicant" as "a person who,...having regard to his income, disposable capital, liabilities, family obligations and such other circumstances as are relevant, is unable to obtain necessary legal assistance out of his own financial resources." This is expanded on by the draft Legal Aid Rules, made pursuant to the agreement. They provide that "a certificate shall be granted to (a person) ...who establishes to the satisfaction of the granting authority that he is unable from his own resources to obtain competent legal advice; in all other cases a certificate may be granted to a person who establishes such

inability in respect of a proceeding or proposed proceeding before any recognized tribunal, or for the purpose of consulting a solicitor to draw documents, negotiate a settlement, or obtain advice."

Obviously, the above statements leave a wide discretion. Currently, however, it appears that the emphasis, in administering the Alberta scheme, is to limit the granting of certificates. This appears in a brochure issued by the provincial director, dated July 1, 1972. That document has to do with the matter of criminal legal aid, and is intended for the guidance of Regional Committees. The following statements, amongst others, appear in that document:

> "In some cases it may be advisable to delay issuing a certificate in the first instance. Where the accused is known to members of the committee and they have experience in the particular type of crime and have always provided their own counsel in the past, they should be encouraged to do so again. Cases such as this are charges of living off the avails of prostitution. Accordingly, a little delay in supplying a legal certificate may result in no legal aid certificate being required (emphasis added)."

> "It is repeated that the fees are not intended to supply or provide an adequate living for lawyers. Legal aid is designed as a service to the public and the burden of supplying that service is to be born by the bar generally. A roster system must exist and the roster system must be followed by the director, the assistant directors and the area committees. It is only by doing this that we are able to (1) discourage applications and (2) spread the burden fairly (emphasis added)."

> "It is hoped that this operation of a roster system will produce a substantial savings in criminal legal aid. Experienced criminals may wish to choose their own counsel. When it is made plain to them that no such choice exists and that he is likely to get a very competent young lawyer whose real specialty is in the commercial or negligence fields then the experienced criminal may not wish to take advantage of the plan (emphasis added)."

The matter of eligibility is put as follows, in a form of public notice issued by the provincial director having to do with criminal legal aid:

> "An applicant must prove to the satisfaction of the Legal Aid Committee that he does not have sufficient assets or income to retain his own lawyer. An applicant is expected to use all usual and ordinary means of raising funds for his own defence before applying for legal aid. Family and friends are expected to assist in appropriate cases."

Provision is made in the terms of the agreement between the Alberta Attorney General and the Law Society for the imposition of a deterrent fee. In that connection the draft rules governing legal aid contained the following, somewhat mysterious, statement:

> "An applicant for legal aid may be required to attend at the office of a solicitor nominated by the plan and pay a fee of $5.00 for the advice and report to the plan. He shall authorize the solicitor to reveal to the plan the facts and circumstances, and the circumstances of his finances."

The plan allows for contributions being paid, to the cost of legal aid, by a client. This is to be found in one of the terms of the above agreement, which provides that a certificate may issue "on the condition that the legal aid client contributes to the fund the whole or any part of the cost to be incurred on his behalf." This is repeated in the draft rules. In addition, the following statement appears in the above form of public notice, distributed by the provincial director:

> "An applicant for legal aid must be willing to undertake to repay ... when and as his circumstances permit, and might be granted legal aid only on the condition that he pay some of the expected cost in advance or by regular monthly payments."

In this connection, it is to be noted that, in the first fiscal year of the operation of the plan ending March 31, 1972, total "recoveries from clients" amounted to $34,356.00. Total legal aid fees and disbursements were $755,861.00.

Generally, a person who desires to apply for legal aid must attend at the Court House in the judicial district nearest to him. In Edmonton and Calgary duty counsel are employed on week-days to visit the city jails and to take applications from those in custody. In areas where there is no duty counsel, applications must be completed and sent to the secretary of the legal aid committee in the nearest judicial district. For practical purposes, all applications are decided upon and disposed of by the secretary who determines eligibility,

both financial and as to offence, and issues a certificate. A lawyer is then assigned to the legal aid applicant from a roster which includes only the names of lawyers who desire to participate in the criminal legal aid plan. A separate roster is kept of experienced criminal counsel to deal with the more serious criminal charges. All appeals in the criminal field are referred to the committee and require an accompanying report by the trial lawyer. There is no legal aid granted for appeals on questions of pure fact.

In civil matters, an applicant must appear at the legal aid office where a determination of his need is made. If he is found eligible an appointment is made with a solicitor and the applicant is informed that he will be required to pay a $5.00 "deterrent" fee. The purpose of such a fee is to make people stop and think before consulting a lawyer, and to discourage any frivolous and unnecessary demands on the lawyer's time and the public's money. The solicitor then decides whether or not the applicant is able to contribute towards the cost of the legal services he is requesting and, if so, how much he can contribute. The solicitor also reports on the merits of the applicant's case. The committee then processes the application and decides whether or not legal aid shall be granted.

MATTERS COVERED BY THE LEGAL AID PLAN

(A) Criminal

An indigent person charged with any of the following offences will be entitled to legal aid:

> "(1) An indictable offence under the provisions of the Criminal Code of Canada with the following exceptions:
> a. offences set out in Section 483 of the Code, being those in which a Provincial Judge has absolute jurisdiction and which include, among others, the offences of theft, false pretences, and possession where the value is less than $50.00 (now $200.00), obstructing a peace officer, attempted theft, and common assault.

Note: A charge under s. 246(2)(a) (assaulting a peace officer) is covered by legal aid even though set out in s. 483.

(2) An offence under the provisions of the Narcotic Control Act or the Food and Drug Act provided that the prosecution is proceeding by way of indictment and not summary conviction. Note: A prosecution under either of these two statutes for ordinary possession, is often dealt with as a summary conviction matter.

(3) An offence under a Provincial or Federal Statute where the proceedings are by way of indictment and not summary conviction, unless specifically excluded from coverage by the Alberta Legal Aid Plan.

(4) A prosecution against a juvenile where legal aid is requested by the presiding Juvenile Court Judge or at the discretion of the Legal Aid Committee.

(5) A prosecution under the provisions of the Juvenile Delinquent Act being tried in the Provincial Court.

(6) An application by the Crown for a sentence of preventative detention as a habitual criminal or as a dangerous sexual offender."

In addition to the exclusions from coverage referred to in the foregoing, the following matters are outside the plan:

(1) A charge under any of Sections 234, 235, 236 or 237 of the Criminal Code of Canada (these cover impaired driving, refusal to submit to breathalizer test, driving with more than .08 alcohol, and driving while suspended) even if the prosecution is proceeding by way of indictment.

(2) A charge under a provincial or federal statute such as the Highway Traffic Act, Liquor Control Act, Game Act, Juvenile Delinquents Act, Immigration Act, unless the prosecution is proceeding by way of indictment (which will be very unusual, and under provincial statutes impossible) or unless specifically requested by the presiding judge.

The foregoing is subject to the right of a Regional Committee, in

its discretion, to grant legal aid to an accused indigent person excluded from coverage but who can satisfy the Committee that he would face loss of liberty or livelihood if convicted.

(B) Civil Matters

In civil matters there is nothing which is specifically excluded on the basis of the nature of the proceedings to be taken. The only general limitation on the granting of civil legal aid is that the applicant must be a resident of Alberta. It is up to the area committee to determine in each case whether or not a legal aid certificate shall be issued in a civil matter, although they are required to follow the general policy and guidelines as formulated by the Joint Committee. For example, it was a policy decision of the Joint Committee to allow legal aid in divorces only where the physical or mental health of the person involved was or would be adversely affected if a petition were not launched immediately. This decision was made because of a lack of funds to carry out all civil and criminal legal aid as originally proposed. Legal aid in civil matters is not restricted to litigation but may also include any service for which a "reasonable person might seek the services of a lawyer".

APPLICATIONS FOR LEGAL AID (April 1, 1971 - March 31, 1972)

The following is a summary:

Matter Involved	Total Applications	Total Granted	Total Refused
Criminal	4,781	3,183	1,058
Civil	3,763	1,929	1,833
Divorce only	1,833	937	986

COST OF THE OPERATION OF THE PLAN

For the 1971-72 year, the government of Alberta appropriated $900,000.00, and paid it over to the Law Society for the purposes of the plan. In addition to that, and as noted above, the plan received a total of $34,356.00 by way of "recoveries from clients". In that same period, it paid out $755,861.00 in legal aid fees and disbursements. Total administrative expenses were $88,869.00. This left an excess of receipts over disbursements of $89,626.00 at the end of the fiscal year on March 31, 1972.

The provincial Joint Committee estimates the following as "estimated case costs.":

	Actual Number of Cases for 6 months ended Sept. 30/71	Average Cost Per Case
Criminal:		
Homocide	37	$759
Robbery	154	130
Theft, B. & E.	768	100
Vehicle	3	146
Narcotics and F.D.A.	144	149
Assault	172	115
Fraud and false pretences	71	100
Forging and uttering	44	103
Sexual offences	47	215
Other	194	173
Civil:		
Divorce	409	276
Other domestic	63	149
Custody and wardship	56	132
Damage action	15	187
Alimony enforcement and reduction	21	134
Other	82	161

FIRST ANNUAL REPORT OF PROVINCIAL JOINT COMMITTEE ON LEGAL AID

This report covers the period from April 1, 1971 to March 31, 1972. In part, it reflects the charitable philosophy which pervades the Alberta plan in referring to it as "... a joint venture between the government ... and the Law Society ... supported financially by a $900,000.00 grant from the govern-

ment and by the members of the Society participating in the plan accepting substantially reduced fees in order to provide legal services to those members of the public who are unable to obtain it with their own resources." (Emphasis added)

The report indicates that the plan is under-financed. It says, in part, "in order to operate within the budget strict economies had to be enforced including 'hard-line' on legal aid divorces". It is clear, however, that this is a matter of pride to the committee. In that connection, it notes the fact that the provincial scheme costs 60¢ per capita. This compares to more than $1.50 per capita under the Ontario plan. Of these figures, the committee says "this saving comes from reducing administrative expenses to the absolute minimum and by a very substantial contribution from the practicing bar in the province".

The report deals with the matter of student involvement in the legal aid scheme. This, however, is limited to law students at the University of Alberta operating a small "clinic" which in reality is a mere referral agency where indigent persons can be passed on to the legal aid office. It can in no way, that is, be compared to the operation of the student clinics currently being run by the law schools of the University of Dalhousie, Osgoode Hall and the University of Saskatchewan.

The committee is aware that this student "clinic" could, if its services were expanded, play a meaningful role in the legal aid plan. In that connection it reports the fact that the plan proposes, in the present year, to pay the salary of a full-time director for the student office. Of this departure, the committee says "it is hoped ... to discover whether a storefront approach provides a more workable system of legal aid".

The committee comments on certain "shortcomings" of the plan. It

lists the following:

(1) "Difficulties concerning the appointment of legal aid counsel, the dissatisfaction of members with the taxation of their accounts and the general dissatisfaction of the public when their applications for legal aid are refused ... are matters that cause concern."

(2) "The financial limitations have made it impossible for the committee to consider any expansion of coverage. This has resulted in criticism of the fact that legal aid is generally not available for all offences under the Criminal Code. It is highly desirable that all offences where a person is likely to be incarcerated or is likely to lose his livelihood should be covered. This would require a substantial increase in funds but at the time being (sic) this increase does not appear to be forthcoming."

(The above comment suggests that the discretionary power of a local legal aid committee to grant legal aid, as noted above, where the accused would face loss of liberty or livelihood is rarely exercised.)

(3) "There have been many problems with respect to the distribution of legal aid appointments among the members of the legal profession. Some lawyers actively seek legal aid appointments. Other lawyers let it be known that they accept appointments only because they feel that they have a duty to do so. A minute proportion of the bar do not wish to participate in the plan at all. Some lawyers do not practice in the criminal field and therefore an even distribution of appointments is an impossibility. It is however the object of the plan to spread the burden equally among the lawyers participating, bearing in mind that the very senior members of the bar ought not to be asked to participate." (Emphasis added)

TARIFF OF FEES

Lawyers participating in legal aid work are paid in accordance with designated tariffs. It seems that these are not structured on the basis of what the "man of modest means" might be expected to pay for legal services, but rather reflect a contribution by practitioners in accepting a lower fee than they might otherwise reasonably expect to earn.

PROVISION OF LEGAL AID TO NATIVE PEOPLE

The problem of providing legal aid in the northern part of the province has largely been left up to the Native Counselling Services of Alberta. That service (which in part is federally funded) holds workshops in areas where the local native population requests their presence. In these workshops an attempt is made to help native people to understand the processes of the administration of justice. The service has a cadre of court workers. The main concern of the service, however, is to attempt to deal with the native alcohol problem. Accordingly, while the court workers deal specifically with the legal problems of the native people in court, this is done within the context of an attempt to deal with the problem of alcoholism.

By reason of the existence of the above service, the legal aid plan in Alberta has not made any specific attempt to get legal aid to the native people in the province. Rather, it leaves it to the Native Counselling Service to have native people use the ordinary machinery of the system.

The provincial director of the legal aid plan has the following comment to make, in a letter dated June 28, 1972:

> "The type of offence which is covered by legal aid is the area which will be of most interest to you and which in my opinion affects the Indian and Metis segment of the population more severely than any other. Essentially, legal aid is available for indictable offences but not for offences which are punishable on summary conviction. There are a few specific exceptions and these are set out in the copy of a notice which I am enclosing with this letter. Obviously, any of the charges which are relatively minor such as the Liquor Control Act, Highway Traffic Act or Wild Life Act are offences punishable on summary conviction and there ... not covered by the Alberta Legal Aid Plan. It has been experienced that the Indian and Metis people find themselves charged with these offences quite frequently. The other charges which are not covered and which are of importance here are the offences against property where the value is under $50.00 and charges such as vagrancy and common assault (which are summary conviction offences)."

ASSESSMENT

It seems clear that the Alberta plan has an element of charity in it. That is, lawyers working under it are expected to perform their services for a fee which will be lower than the one they would earn in acting for the mythical "man of modest means".

Since Alberta's plan is structured on the basis of a fee-for-service delivery system, it would appear that a poor person who has an "uneconomic case" would have to be refused service. That is, legal aid could not be granted where the costs of it, to the plan, on a fee-for-service basis would exceed the dollar and cent value of the problem involved - no matter how important it might be to the applicant himself.

The restrictions on criminal legal aid are obviously severe. This perhaps reflects too great a concern with cost.

Finally, the Alberta plan appears to have failed, up to the moment at least, to take any concrete steps in an attempt to deal with the problem of the provision of legal services to poor persons in the remoter parts of the province - notably those of native ancestry.

SECTION 3 - THE BRITISH COLUMBIA LEGAL AID SCHEME

GENERAL

There is no legislative base in this province which directly provides for a legal aid program. The limited scheme which is presently in operation is carried on by a non-profit organization called The Legal Aid Society of British Columbia. It was incorporated under the Societies Act of the province on February 26, 1970. It provides a limited program of legal assistance on both the criminal and civil sides. The Society itself has a staff of three lawyers. In attempting to provide legal aid, it relies in main part on the services of private practitioners. The practitioners who participate in this work are paid on a modest tariff by the government. In the fiscal year 1972, the government paid out a total of approximately $633,000.00 in fees to lawyers acting under the program.

The main office of the Society, located in Vancouver, has part of its expenses defrayed by an annual grant from the Law Foundation. That agency is constituted by the Legal Professions Act of British Columbia. Under the statute, this agency is to receive monies paid by banks and trust companies by way of interest on general trust accounts maintained by practicing lawyers in British Columbia. The same statute makes it compulsory for a lawyer, in private practice, to maintain an interest bearing account into which his general trust funds (held for clients) are to be paid. The bank or trust company is then required, by law, to pay the interest over to the Law Foundation. The Foundation, in turn, is required to use these monies "... for the purposes of legal education, legal research, legal aid, law reform, and the establishment, operation and maintenance of law libraries." In the most recent fiscal year this Foundation

paid approximately $60,000.00 to the Legal Aid Society to assist in the expenses of the operation of the provincial office. In the same year the government of the province made a grant of approximately $30,000.00 to the Society.

ADMINISTRATION

Outside of Vancouver, it seems that the administrative structure is skeletal. The provincial office in Vancouver attempts to deal with legal aid matters in the city. It accepts applications for legal aid, determines eligibility and handles those cases which it is able to. Matters which they are unable to undertake are referred to private practicing lawyers, acting under the tariff referred to above.

In Victoria and New Westminster, the local bar associations operate local clinics. It is their function to carry out the tasks referred to above.

There are also 29 "area directors" located in certain of the smaller urban centres in the province. These are practicing solicitors. It is their function to deal with applications for legal aid, determine eligibility and refer to private practitioners. The government pays them at the rate of $8.00 per application processed.

The inadequate nature of the administrative structure is referred to in the 1972 annual report of the Legal Aid Society. The president said:

> "Service delivery in the outlying areas however remains an essential problem. While we have no certain statistics, it seems likely that the need of the individual for legal aid in those areas is as great at least as the need in the urban areas. Unquestionably, proportionately fewer persons have access to and receive legal aid in the less populated areas."

MATTERS COVERED UNDER THE PLAN

(A) Civil Matters

No fees are paid to lawyers handling civil matters. Only disburse-

ments are paid by the government. In this connection the following statement appears in the annual report of 1972:

> "We have made no head-way with the government to provide financing of a civil legal aid program. At present only disbursements are paid. The fact that the civil legal aid works at all (and we agree that it does not work too well) continues to be attributable to the voluntary contribution made by many lawyers throughout the province."

The above, of course, is a severely limiting factor insofar as the availability of legal assistance to a poor person is concerned. In addition, the restriction placed on the services which are available are severe. They are as follows:

1. Divorce and matrimonial causes, including judicial separation, nullity, alimony actions, maintenance orders, alienation of affections, etc., unless the applicant has been referred in writing by a qualified social worker who must recommend such legal aid for the benefit of infant children, or the applicant has obtained a letter of recommendation from a qualified medical practitioner indicating that the health of the applicant may be endangered by the continuing matrimonial problem;
2. Defamation;
3. Breach of promise of marriage;
4. Private prosecutions in criminal and quasi-criminal matters;
5. The obtaining of Letters Probate or Letters of Administration of estates except where refusal would work undue hardship;
6. Proceedings relating to any election;
7. Proceedings subsequent to judgment for recovery of a liquidated sum;
8. Proceedings in bankruptcy subsequent to a Receiving Order or authorized assignment;
9. Small Debts Court matters;
10. Family Court matters; (legal aid will be provided where a child is apprehended pursuant to the Protection of Children's Act.)
11. Appeals except where in the opinion of the Legal Aid Committee of the Benchers or the local Bar Association, as the case may be, it appears that there has been or may be a substantial miscarriage of justice;

12. Matters where the furnishing of legal services would confer no real benefit upon the applicant, and matters where, if the applicant where able to pay, he would be advised not to proceed with the matter because the cost would be disproportionate to the benefit to be obtained. Legal aid will not be granted to enable persons to pursue remedies which they would not choose to pursue if able to pay in the normal way.

13. Matters where the Legal Aid Society or the local Bar Association, as the case may be, decides that because of special circumstances legal aid should not be granted.

(B) Criminal Matters

Criminal legal aid is subject to the following exclusions:

1. Legal aid will not be given in summary conviction matters unless there is a real possibility that the applicant, upon conviction, would be sentenced to a term of imprisonment.

2. Appeals, except where in the opinion of the Legal Aid Society it appears that there has been or may be a miscarriage of justice.

3. Matters where the Legal Aid Society decides that because of special circumstances legal aid should not be granted.

ELIGIBILITY

The following is a statement of the criteria:

"A person is qualified for free legal aid if requiring him to pay legal fees would impair his ability to furnish himself and his family with the essentials necessary to keep them decently fed, clothed, sheltered and living together as a family, or where he is at the moment without funds and requires immediate legal assistance for the preservation of his legal rights. In the latter case legal aid may be terminated upon the applicant becoming able to obtain legal services in the usual way."

The Plan contemplates that where an applicant is capable of paying a partial fee he will be expected to do so.

CASES HANDLED UNDER THE PLAN IN THE 1972 FISCAL YEAR

The statistics given in the annual report are somewhat difficult to understand. It appears, however, that a total of 5,709 criminal cases were handled, of which only 245 were dealt with outside the city of Vancouver. If this is a correct interpretation of the report, then the average cost per case was $111.00.

The government paid a total of $14,659.10 to cover disbursements of lawyers acting, under the plan, with respect to civil matters during the year.

LOCAL CLINICS

The Committee is aware that, in addition to the legal aid scheme discussed above, neighbourhood legal aid clinics also offer services to poor persons in the city of Vancouver. They do not function, however, under or as part of any legislative scheme brought in by the provincial government. The Committee regrets that time, and resources, did not permit it to survey these operations.

SECTION 4 - THE MANITOBA LEGAL AID SCHEME

GENERAL

Manitoba's comprehensive legal aid scheme went into operation on September 1, 1972. It springs from The Legal Aid Services Society of Manitoba Act (S.M. 1971, c. 76). The statute provides, basically, for the provision of legal services by private practitioners, on a fee for service basis. The Act also permits, however, the establishment of Neighbourhood Legal Aid Centres. This dual approach stems from the recommendations of a Fact Finding Committee on Legal Aid appointed by the Attorney General of Manitoba. With respect to both civil and criminal matters, that committee recommended that an applicant who qualified for legal aid should have free choice of counsel. In its report it also went on to say that it

> "strongly recommends the establishment of a neighbourhood law office on a one year, trial basis in down-town Winnipeg, to be staffed full-time by at least two lawyers. The experience of a great number of legal aid programs throughout the United States of America, funded by the Office of Economic Opportunity, has convinced (the committee) that, as an adjunct to, and not in substitution for, a comprehensive system of legal aid, every major urban centre needs a full-time legal clinic located in or very close to the area of greatest poverty, staffed by lawyers who have or are prepared to acquire specialized knowledge in the fields of what have become known as 'poverty law'. ... The neighbourhood law clinic, while by no means restricting itself to comparatively minor problems ... would be able to deal with them, dispense advice, refer to the Legal Aid Society any matters of apparent gravity that could not readily be handled at the neighbourhood law clinic level, act as a sieve whereby much needless work on the part of the executive director could be avoided, and serve as a constant reminder to the people living within the immediate area that help is, in fact, available. The lawyers and other personnel staffing the neighbourhood law clinics should be paid a salary by the Society, and consideration should be given to the employment of a full-time or part-time social worker to assist them."

ADMINISTRATIVE STRUCTURE

The Manitoba Legal Aid Plan is administered through the Legal Aid Services Society. It exists, under the above noted statute, as a corporate entity. Its board of directors is made up of nine persons, appointed by the Lieutenant Governor in Council for a period of one year. Four of these persons are chosen from a list of names submitted by the Law Society of Manitoba. The remaining five are chosen by the Attorney General from the community at large. As the board is presently constituted, three of these latter members are not lawyers. The board is responsible for budget policy, general policy direction, research and development, community relations, and the hiring and firing of senior personnel.

The executive director is appointed by the board and is responsible for the complete administration of the plan.

The Act provides for the appointment of area directors. Each of these must be a solicitor. They are to be appointed by the board as full-time employees, with the approval of the Attorney General, in each of five of the judicial districts in Manitoba. Their task is to receive, and process, applications for legal aid in their respective districts. They must make a financial assessment of the applicant's means, and determine eligibility within the guidelines of the statute and regulations (hereafter discussed).

Private practitioners, who are ready to handle legal aid cases, will have their names placed on panels of solicitors. Three panels are maintained - criminal, civil and duty counsel.

Private practitioners handling legal aid matters are paid on the basis of a tariff provided for by regulation under the statute. In preparing the tariff which the Board of Directors recommended to the government, the principle which it adopted was that the tariff "should, basically, reflect what a person

of modest means might reasonably be expected to pay a lawyer. The basic yardstick or price unit (used) is $25.00 an hour."

In the current fiscal year, solicitors' bills are being paid, by the executive director, on the basis of 80% of their amount. This is being done because the cost of operating the plan involves a good many imponderables. The above technique is viewed "as a temporary expedient and safety device only" by the plan's executive director. It is clearly intended that, under the scheme, solicitors in private practice should be paid 100% of the amount of their bills.

NEIGHBOURHOOD LEGAL AID CENTRES

As noted above, the statute and regulations provide for the establishment of neighbourhood legal aid centres, in communities designated for this purpose by the Board. Each clinic, once established, is to be directed by a senior lawyer (defined as one with a minimum of five years experience in practice). He will be under the general supervision of the executive director. In addition, the regulations provide for the employment of junior lawyers, articling students, undergraduate law students, social workers and clerical help. The senior lawyer is to be allowed to regulate the number of cases accepted by the clinic, if and when necessary to do so. In exercising it, the senior lawyer may decide to exclude certain types of cases from his centre, as a matter of policy, if the load becomes too great for his existing staff to handle it.

The function of such neighbourhood legal aid centres is to advise, assist or represent legally aided clients, as well as to provide the community with information regarding the law, and the availability of legal services. With the approval of the executive director, the clinic is also able to rep-

resent groups and organizations as well as individuals. Under the regulations, the clinic is empowered to accept applications for legal aid and to issue certificates in the same manner as the area director. Solicitors and articling students employed in the clinic may also be directed to act as duty counsel by the executive director of the plan. Each clinic is to have an advisory committee, appointed by the Board, from a list of nominees submitted by community organizations in the area to be served by the clinic.

At the present time, only one such community clinic has been established. It is located in the city of Winnipeg. The advisory committee which has been set up in conjunction with it has no lawyers amongst its members. This clinic commenced operation in September, 1972, employing one senior lawyer, three junior lawyers, four articling students, a social worker and clerical help. The function of the social worker is to handle matters where the individuals involved do not have strictly legal problems. He will refer such problems, where necessary, to an appropriate agency to be dealt with. It is the task of the social worker, also, to follow up each such case to see that those who have requested help actually receive it.

A client coming into the clinic, who is determined to be financially eligible and whose problem goes beyond mere legal advice, is asked if he would prefer to be represented by a lawyer from the legal aid panel, rather than by a staff member of the clinic. The committee has been advised by the Manitoba executive director that, since the emphasis with the Winnipeg clinic is in developing programs of preventive law, class actions and test cases, it is not desirable, in terms of priority, that the clinic should build up a conventional clientele in the usual sense.

In a brochure which the Winnipeg clinic recently issued the following description of its function is given:

"Centre lawyers work mainly for people of low income who cannot afford to pay for legal services and who may not seek the services of lawyers who are located in the down-town business area, outside their community. The centre specializes in legal problems affecting people of low income such as welfare and debt matters. Centre lawyers can take cases which the down-town lawyers may consider too time consuming in terms of the possible results, in spite of the importance of the matter to the client. Centre lawyers go out into the community to speak to individuals and groups about specific legal problems or the law in general in order to make the public aware of the centre, legal aid services and the work lawyers do."

UNIVERSITY LAW CENTRE

The Manitoba scheme makes provision for a University Law Centre. This is to be under the supervision and control of the Dean of Law of the University of Manitoba. The Board may, however, agree to assist in its direction, supervision and financing. Law students working at this centre may assist duty counsel, the neighbourhood legal aid centre or any solicitor employed by the Society. It is also proposed that a person who is refused legal aid for other than financial reasons could be referred to this centre for help. At the moment, the Legal Aid Services Society and the Benchers of the Law Society are working on an amendment to the Law Society Act to enable and facilitate the use of law students in the legal aid program.

DUTY COUNSEL

Manitoba has adopted the duty counsel position to be found in the Ontario legal aid scheme. They may be used in juvenile and civil courts as well as criminal courts. They are to be appointed by the Board on a full-time or part-time basis, depending on need. They are to be paid $75.00 per day.

At the present time, the function of duty counsel in civil courts has not been worked out. The Board is considering the use of duty counsel to expedite the handling of uncontested divorces, but a formal decision in this

respect has not yet been made.

COVERAGE UNDER THE PLAN

Legal aid in Manitoba is available as of right to a person who qualifies financially in respect of the following:

(1) civil or criminal proceedings in the Court of Queen's Bench, the Federal Court of Canada, the Manitoba Court of Appeal, or in County or Surrogate Court;

(2) where an applicant is charged with an indictable offence;

(3) where an application is made for preventive detention of the applicant for legal aid; and

(4) in proceedings taken against the applicant under the Extradition Act or the Fugitive Offenders Act.

Legal aid may also be obtained in certain other cases at the discretion of the executive director:

(1) where the applicant is charged with a summary conviction offence or the infraction of a city or municipal bylaw if upon conviction there is a likelihood of imprisonment or loss of means of earning a livelihood;

(2) where the applicant is charged with an offence under the Juvenile Delinquents Act;

(3) where proceedings are taken against the applicant in Juvenile or Family Court;

(4) where proceedings are taken before a quasi-judicial or administrative board or commission;

(5) for contempt of court;

(6) in bankruptcy proceedings; and

(7) in respect of drawing documents, negotiating settlements, or giving legal advice. (Emphasis added)

It is also within the discretion of the executive director to grant a legal aid certificate in any application for leave to appeal or in any proceeding by way of a prerogative writ. The area director has a discretion to issue legal aid certificates in cases where an appeal is sought in the

courts or to an administrative tribunal.

In civil matters, before a solicitor accepting a certificate can proceed, he must issue his written opinion to the Society, after interviewing his client, that it is reasonable to proceed or defend as the case may be.

ELIGIBILITY

Eligibility criteria in the financial sense are very flexible as enunciated in the Act and the regulations. The area director, or other official within the heirarchy of the plan who is assessing ability to pay, is instructed merely to take into account "income, disposable capital, indebtedness, and the claims of any persons dependent upon the applicant, as well as any other relevant circumstance, to determine if the applicant can pay for any or all of the cost of the legal aid he requires". Any amount which it is determined that the applicant can pay in order to cover the cost of such legal aid must be a total sum that can be repaid over a period of two years. However, the Society has been asked by the Cabinet to work out a more definitive assessment formula in conjunction with the Department of Health and Social Development, to be approved by the Cabinet. The Fact-Finding Committee, upon whose recommendations the plan was adopted, recommended figures of $2,500 for a single person, $3,500 for two persons, $4,000 for three, $4,500 for four, and $5,000 for five or more. These recommendations may have some influence upon the Society if precise figures are to be adopted and can perhaps be looked upon as the type of eligibility criteria that are likely to be imposed in Manitoba.

PROCEDURE FOR APPLYING

Applications for legal aid by residents of Manitoba are made to the

area director in the area where he resides, or in the area in which the event took place for which legal aid is required, or to the head office of the Society. A resident of the Winnipeg area is also able to apply for legal aid at the neighbourhood legal aid centre. An applicant who is not a resident of Manitoba must apply to the executive director. Once an applicant has been found financially eligible for legal aid as described above, a legal aid certificate is issued to him and he is entitled to consult the lawyer of his choice. Where the applicant cannot, or will not, make a choice, the area director will assign counsel. The solicitor thus chosen or assigned is free to decline to accept the case, but once he has accepted he must handle the case himself and cannot delegate it to junior members of his firm unless under exceptional circumstances. A solicitor accepting a legal aid certificate in civil proceedings must furnish the area director with a written opinion that it is reasonable to proceed and must receive the permission of the area director before he proceeds in the case. However, if certain preliminary or initial steps must be taken immediately to preserve the rights of the applicant, the solicitor is entitled to take these steps before such permission is received.

Provisional certificates may be issued pending an investigation into the applicant's financial means where time is of importance. No certificate can be cancelled without notice to the applicant of intention to do so and the setting of a time at which the applicant's objections, if any, may be heard. All such determinations are subject to appeal to the executive director from the area director and to the Board from the executive director. The decision of the Board is final.

BUDGET

The draft working budget, prepared by the executive director for

1972-73, calls for a total expenditure of $1,145,360.00. Included in that global figure, is the sum of $750,000.00, representing the estimate of the cost of furnishing legal services on a fee for service basis, by private practitioners. Also included is the sum of $91,050.00, being the estimated costs of the Winnipeg neighbourhood law centre. Total administrative costs are estimated at $148,910.00.

By an amendment to the Manitoba Law Society Act, interest on lawyers' general trust funds is to be used as one source of funding for the legal aid program.

ASSESSMENT

The Manitoba program is an interesting example of an attempt to blend the fee for service delivery system with neighbourhood clinics. It is clear that the plan intends that clinics should operate only as an adjunct to the fee-for-service approach. In so doing, it seems to be intended that the clinics should handle the "uneconomic case". That is, where a poor person has a problem which, viewed in financial terms, would not justify the retaining of a private practitioner on a fee-for-service basis to act for him, the clinic will handle the matter. This kind of case is discussed in various other parts of the committee's report. Not uncommonly, in the committee's view, the problem of the poor person will fall into this very category. It is the type of case which cannot be handled under the Ontario scheme, as noted in the chapter dealing with that province. Assuming, however, that the Manitoba plan will eventually have sufficient clinics spread throughout the province to service all poor people with this kind of problem then, in the committee's view, the eventual cost will be very nigh. That is, the situation will be one in which the uneconomic case will be handled by the clinic, and the "middle class law problem" handled by a

private practitioner on a fee-for-service basis.

There is another possible problem springing from the above. If, indeed, the clinics end up in the position indicated in the preceding paragraph, their professional staff may be regarded by other colleagues as being "second class lawyers". It would seem essential, that is, and for a variety of reasons, to have clinics in a position where their professional staff will on occasion at least be concerned with cases which any colleague would regard as being of significance. Not only is this necessary in the interests of professional pride, but it is also vital in order to ensure real professional competence in the clinic staff.

SECTION 5 - THE NEW BRUNSWICK LEGAL AID SCHEME

GENERAL

New Brunswick's legal aid scheme is provided for under the Legal Aid Act (S.N.B. 1971, c. 11). The statute is patterned on the Ontario legislation.

The legal aid plan went into operation on January 1, 1972, but it is limited to the provision of legal services with respect to criminal matters only. The portion of the statute which makes provision for civil legal aid has yet to be proclaimed.

Following, as it does, the Ontario example, the legal aid scheme in this province looks to the delivery of services by private practitioners on a fee-for-service basis.

ADMINISTRATIVE STRUCTURE

The Act authorizes the New Brunswick Barristers' Society to "establish and administer" the plan. That Society, with the approval of the provincial Minister of Justice, appoints the provincial director who is in over-all charge of the operation of the scheme.

There are eight administrative areas in the province. Each has an area director, appointed by the Society, again with the approval of the Minister.

The Ontario example is again followed in the provision for area committees. They are to consist of at least three persons, appointed by the Society. At least one of them must be a lawyer.

Solicitors who are prepared to act in legal aid cases will have their

names placed on an appropriate panel in the area director's office. Legally aided clients will then select the lawyer whom they wish to have represent them from these panels. Lawyers are paid in accordance with a tariff, which closely follows the Ontario example. As in that other province, the lawyer will be paid 75% of the value of his services, together with payment of disbursements in full.

Duty counsel are employed. Their function appears to be precisely the same as in Ontario.

COVERAGE UNDER THE PLAN

The New Brunswick statute departs from the Ontario example in one important way. The granting of any legal aid is, in any case, discretionary. The area director is to make the initial decision, subject to an appeal to his area committee in the event of a refusal to grant a certificate. The only provision in the statute which affects the exercise of the area director's discretion is negative. The Act requires that he is not to issue a certificate "in respect of an offence punishable on summary conviction unless he is of the opinion that (a) there is a possible defence to the charge; (b) there are in existence circumstances that would serve to mitigate the severity of the penalty that may be imposed; or (c) because of extraordinary circumstances, it is in the interests of justice that the applicant be represented by counsel."

ELIGIBILITY

In this area, again, the New Brunswick legislation is distinctive, as compared to Ontario. The regulations made under the Act spell out, in close detail, the manner in, and criteria by, which an area director is to assess, and determine, eligibility. This differs from Ontario in that, under the

statute of that other province, the statutory provisions with respect to eligibility are very wide, and discretionary. Further, New Brunswick does not require the assessment to be carried out by its Department of Social Welfare, as is the case in Ontario.

ASSESSMENT

The New Brunswick plan has only had one year of operation. Accordingly, it is too early to attempt any meaningful assessment of its operation. On its face, however, the New Brunswick statute is open to criticism on the basis that it nowhere provides for legal aid as a matter of right. The granting of legal aid, that is, is in every case discretionary. It may perhaps be said that this aspect of the plan gives it the colour of charity.

SECTION 6 - THE NOVA SCOTIA LEGAL AID PLAN

GENERAL

The legal aid scheme in Nova Scotia commenced operation in the summer of 1972. It proposes to provide legal assistance to poor persons through the use of legal aid clinics, staffed by salaried lawyers. It contemplates, however, that private practitioners will, when requested so to do by a clinic, contribute their professional services without fee.

The legislative base for the legal aid program is found in the Legal Aid Planning Act (S.N.S., 1970-71, c. 14). Section 3 of that statute reads as follows:

> "In order to plan for legal aid and develop a legal aid program for the province, the Attorney General may:
>
> (a) make an agreement or arrangement with the (Barristers' Society) for the providing of legal advice, assistance and services by the Society and by members of the Society;
>
> (b) provide or arrange for the providing of legal advice, assistance and services by members of the Society;
>
> (c) provide directly, or through the Society, offices, facilities, resources, equipment, stenographic, clerical and other staff and assistants to persons engaged in providing legal aid."

Pursuant to this statutory mandate, the Attorney General for the province entered into an agreement with the Barristers' Society, dated October 13, 1971. In its preamble, the agreement provides, amongst other things, that since "the magnitude of the need for (legal aid services), the cost of furnishing them, the willingness of the public to pay such cost, and the administrative structure most suitable for delivering such services are all comparatively unknown, the province has determined that such program

should be introduced in two or more stages, the first stage to be an introductory or trial program limited in measure but designed:

> "(1) to provide legal services to those in need of them to the extent possible within the limits of the financial and other resources made available for such stage; and
>
> "(2) to gain experience whereby the need for, and cost of, such services and the administrative structure best suited for delivering them may be better assessed;

"and the second stage to be an expanded program, formulated on the basis of such experience, utilizing more resources, and adapted to better serve the need for such services as it is then perceived."

In the recital the agreement outlines the basic approach involved as calling for "both the engagement of a limited number of salaried staff lawyers and the contribution, gratuitous and otherwise, of services by practicing members of the Society."

The agreement incorporates into it a "memorandum" having to do with legal aid, submitted by a committee of the Barristers' Society. That memorandum refers to the fact that little is "known or understood (about) the concept of 'preventive law' - the use of legal services in identifying and combatting the causes of poverty and its associated factors which in turn promote crimes and the other problems that, after they arise, require traditional legal aid." It also states that it is "probably not desirable to attempt to standardize the plan throughout the province. Rather the structure should permit local variation in response to local need and initiative."

In its over-all result, the memorandum contemplates the establishment of neighbourhood legal clinics throughout the province. These clinics are to be staffed by salaried lawyers. It is the hope of the memorandum that the clinics may be able, to the extent necessary, to call on gratuitous services from members of the practising bar in their localities in order to assist in

handling the matters which come before the clinic. There is no provision, in the memorandum, the agreement, or otherwise, for payment for any services provided by private practitioners.

SCOPE OF COVERAGE

The above agreement reads as follows:

> "No restriction should be placed on the legal services available under the plan. They should embrace the full range, including matters arising in the filed of criminal, landlord and tenant, debtor and creditor, divorce and family law.
>
> It is hoped that it will be possible to arrange for duty counsel to be present in provincial courts at times when accused persons are first arraigned. In some urban centres, this service is to be provided at Halifax or Sidney, probably a volunteer panel will be required."

With such wide coverage, the agreement admits that the demand for services will be such that the salaried lawyers working in the neighbourhood clinics will not be able to handle it and the "accordingly, provision must be made ... for the gratuitous participation, in a substantial way, of the practising bar".

ELIGIBILITY

The agreement contains the following provision:

> "Eligibility rules should be determined, and revised, from time to time by the council (of the Nova Scotia Barristers' Society) on the basis of experience. Initially any person with an aggregate annual income of less than $3,000 should be eligible for legal aid, and persons with aggregate annual incomes in excess of this amount should be eligible only after successfully passing an appropriate 'needs' test. In the beginning this needs test should be administered informally by the local director or some other convenient person. In time a more formal procedure may be devised, administered by non-legal personnel. Quite possibly, following a needs test an applicant may be required to make a partial contribution to the cost of the requested legal service."

The agreement also notes that "if the (neighbourhood law office)

is properly located, its clientele will tend to fall below the $3,000 per annum level, thereby largely eliminating the requirement for needs tests".

In a form of notice, distributed to the members of the Nova Scotia Bar in the summer of 1972, the provincial director of the program had the following to say about the matter of eligibility:

> "Applicants ... will have to disclose personal data and sufficient information to determine financial means. The needs or means (emphasis added) test will be similar to that employed in social assistance and a standard form will be employed. Where eligibility is more or less obvious, (an unemployed person in custody charged with a criminal offence) the services will be provided as quickly as possible but the information will be obtained later. It may be that some applicants will be determined capable of paying in part or on time basis for legal services they receive."

OPERATION OF THE PLAN

The chairman and one other member of the committee, together with its secretary, spent two days in Halifax in order to see something of the functioning of the plan. They met with, amongst others, Mr. Howard E. Crosby, the executive director of the scheme. His offices were located in a neighbourhood legal clinic in Halifax.

Mr. Crosby said that, in addition to the Halifax clinic, there was another then in operation in Sidney, Nova Scotia. That is another urban centre with a population of approximately 60,000. In addition, another clinic was then in operation at Kentville, Nova Scotia. That centre is located about 70 miles outside of Halifax. It has a population of approximately 6,000 persons.

Mr. Crosby plans to have three full-time lawyers in the Sidney office. Eventually, he looks forward to clinics in the province employing nineteen lawyers. Mr. Crosby estimated that, by that time, a budget of approximately $800,000 would be needed to run the plan.

The Halifax clinic is located in one of the poorer districts. Its

furnishings, and equipment, are pleasant and efficient. Obviously, an attempt has been made to see to it that the decor is not overwhelming to clients.

Upon a client coming into the Halifax clinic, he is shown to an interviewing room where he fills out the basic data sheet having to do with financial eligibility. He is assisted by a secretary in doing this. A staff lawyer then interviews him. Lawyers can only be seen by appointment. Mr. Crosby, in that connection, explained how control is kept over volume by saying "when we can no longer handle the need, we simply stop making appointments."

We discussed the administration of the eligibility requirements with the executive director. He said that they use the Nova Scotia Department of Welfare criteria. He advised the committee members that the clinic did not have "much time to concern themselves with eligibility".

There is no provision in the statute, nor the above agreement, for any kind of appeal mechanism which a client, who is denied legal aid, can resort to. His only avenue of possible redress is to discuss the matter with Mr. Crosby.

The executive director discussed, in a general way, the work of the Halifax clinic with the committee members. They raised the matter of preventive law, and educational programs, being, apparently, contemplated by the agreement which made provision for the scheme. Mr. Crosby said that he thought these were, indeed, laudable goals. It appears, however, that at the present time no real thought is being given to either of these areas. Indeed, Mr. Crosby told the committee members that he inclined away from the prospect of a clinic reaching out, in pursuit of the above goals, into its community. In this connection he was critical of certain local groups, fearing that their activities might serve to antagonize local authorities of one sort or another.

The committee members also visited the neighbourhood legal clinic at

Kentville. It is currently staffed by two young lawyers, together with secretarial assistance. The committee members gathered that there had not been much of an attempt, on the part of the clinic, to co-ordinate its activities with the local bar. Thus, the clinic was handling "fee-generating" accident cases, rather than seeking to have a local practitioner handle them. Most of its work involved criminal matters. In this connection, however, it is to be remembered that the clinic only opened on July 1, 1972. Up to the time of the committee's visit it had opened about 180 files all told.

The committee was impressed with the apparent quality of the young lawyers working both in the Halifax, and Kentville, clinics. They appeared to be able professionals, and highly motivated towards the work they were doing.

Committee members discussed the administrative structure of the legal aid scheme with Mr. Crosby. In raising this, the committee was aware that the above noted statute, and the agreement between the Attorney General and the Barristers' Society, makes no specific detailed provision for administration. Mr. Crosby advised the committee members that in main part the administration, in day to day planning, was done by him. When necessary, he consulted the chairman of the Legal Aid Committee of the Barristers' Society. All in all, it appears that the structure is such that Mr. Crosby, and the chairman of the above committee, are free to proceed as they think best, provided that they keep within the budget. The legal aid committee is administratively responsible for the handling of the funds which are voted by the provincial legislature.

ASSESSMENT

In considering the comments that follow it must be kept in mind that the Nova Scotia plan is very much in its infancy.

The program in this province is of interest in that it marks the first occasion on which, in a Canadian jurisdiction, a legal aid plan has been introduced where the entire emphasis is on the clinic approach as the means for delivering services to poor persons. It is much too early to attempt to form any conclusions as to whether or not it will operate successfully.

The committee has the following reservations about the Nova Scotia plan:

(1) As structured, it nowhere gives a poor person a right to legal aid. The granting of assistance, that is, is entirely discretionary.

(2) Assuming that the above discretion is exercised so as to deny an application for legal aid, then there is no provision for an appeal of that decision.

(3) The plan's reliance on the gratuitous provision of services by private practitioners is open to two objections. It tends to characterize the legal aid plan as charitable. Further, it may be unreal to expect private practitioners, no matter how great their sense of social responsibility, to be able to contribute more than a bare minimum of services on a voluntary basis.

(4) The tentative budget for the plan appears to be too limited. In the committee's opinion, it is questionable that the sum of $800,000 per year, when the plan is in full operation, will be sufficient to meet the real needs of poor persons in Nova Scotia for legal aid and assistance.

SECTION 7 - THE QUEBEC LEGAL AID SCHEME

GENERAL

The Legal Aid Act of this province was passed in the early summer of 1972. It has yet to be implemented. Basically, however, it looks to the provision of legal aid through a system of community legal centres. It seems that the intention is that the fee-for-service delivery system will only be an adjunct to the clinic approach.

ADMINISTRATIVE STRUCTURE

The operations of the legal aid plan on a province-wide basis are to be administered by a corporation known as the Legal Aid Services Commission. It will consist of twelve members - ten appointed by the Lieutenant-Governor in Council in consultation with, and from amongst, persons who are members of groups which, by reason of their activities, are specially qualified to deal with and study the problems of providing legal services to poor persons. The Deputy Minister of Justice and the Deputy Minister of Social Affairs are also members. They sit in an advisory capacity only and do not have a vote. From the ten members chosen by the Lieutenant-Governor, one is appointed chairman and another vice-chairman. Both the chairman and the vice-chairman must be lawyers. These positions are full-time; the appointments are made for a term not to exceed ten years. The chairman and vice-chairman are responsible for the administration and management of the commission. Three of the remaining members are appointed for a period of one year, three for two years, and two for three years.

Regional "corporations" are to be established by the commission in

such regions of the province as it may determine. They are to be called "community legal centres". The affairs of each centre will be conducted by a board of directors consisting of twelve members appointed by the commission for a period of three years. One-third of the members must be lawyers or law professors and one-third must be residents of the region to be served. From these members a general manager, who must be a lawyer, is to be chosen by the board. This appointment must be ratified by the commission. Staff lawyers and clerical help will also be assigned by the board of directors on the recommendation of the general manager.

The regional corporation is also to promote the setting up of advisory committees to represent the interests of the economically under-privileged and to advise upon their needs.

ELIGIBILITY

Legal aid will be available to any "economically under-privileged" person. That is defined in the Quebec Act as "any person who in the opinion of the commission or, as the case may be, of a legal aid corporation, lacks sufficient financial means to assert a right, obtain legal counsel or retain the services of an advocate or notary without depriving himself of the means of subsistence, according to the criteria established by regulation". Regulations have not yet been promulgated.

PROCEDURE FOR APPLYING

An applicant for legal aid will apply to the nearest community legal aid centre. The director is to determine whether or not he is eligible and if so issue a legal aid certificate. This certificate may be temporary pending further investigation into the applicant's means.

Prior to its passage, the above Act was amended so as to require a community legal aid centre to refer a client to a private practitioner, in the event that the client requests this, and the lawyer is ready to act for him. Upon this happening, the practitioner is then to be paid 60% of what his bill would otherwise be.

COST OF THE SYSTEM

Prior to the passing of the above legislation, the Quebec Department of Justice, in its estimates, allowed 2.3 million dollars in respect of legal aid from April 1972 to March 1973. The commissioner of the Commission for Legal Services in Quebec advised the committee that "this amount will certain change and increase when the Legal Aid Act is fully sanctioned". The Act is expected to be implemented in January, 1973.

SECTION 8 - LEGAL AID IN NEWFOUNDLAND, PRINCE EDWARD ISLAND AND THE NORTHWEST TERRITORIES

NEWFOUNDLAND

The legislation in this province discloses no statutory base for any comprehensive legal aid scheme. The committee was unable to get a reply to letters which it wrote to the Chairman of the Legal Aid Committee of the Law Society of Newfoundland, enquiring about the matter of legal aid in his province.

The committee assumes, accordingly, that such legal aid as may be available in this province is furnished by private practitioners on a voluntary basis.

PRINCE EDWARD ISLAND

At the present time, this province does not have any formal legal aid scheme. In the case of an accused person charged with an indictable offence, the Attorney General's Department will appoint counsel to represent him if he is unable to pay for his own lawyer.

On the civil side, legal assistance is only available on a voluntary basis from practitioners.

NORTHWEST TERRITORIES

The committee encountered difficulties in getting any precise information with respect to the matter of legal aid in this part of Canada. The committee is aware, however, that in August 1971 an agreement was made between the federal and territorial governments which provided for the equal sharing of costs, up to $75,000.00, in criminal legal aid and, apparently, for the introduction of some type of civil legal aid.

SECTION 9 - THE MINNESOTA PUBLIC DEFENDER SYSTEM

GENERAL

In approaching an examination of the public defender system in the State of Minnesota, one has to keep in mind that its origin is not political but constitutional. That is, the legislation which provides for the system was not enacted as a result of any kind of political pressure seeking to bring in a legal aid scheme, as a social welfare measure, for indigent persons. Quite the contrary. It exists by reason of the requirements of the 6th amendment to the constitution of the United States of America - as that amendment has been extended to the administration of criminal justice in each individual state. That amendment reads as follows:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence." (Emphasis added)

The effect of this constitutional limitation on the powers of government in the United States, through a line of decisions of the American Supreme Court, is that neither federal nor state authorities can administer the criminal law of the land without providing counsel for persons who are financially unable to pay for such services. In a word, the power of government stops completely at the point where an indigent person, without counsel, faces a criminal charge. The matter cannot be proceeded with without counsel being provided, at public expense.

In response to the above constitutional requirement, each of the states of the union has made provision, of one sort or another, for counsel to act for

indigent persons in criminal matters. Many of them have adopted the public defender system. Minnesota is one in that group. By reputation, its system is probably the best now in operation in the United States.

THE STRUCTURE OF THE SYSTEM

There are two levels in the system: The state public defender's office and the district public defenders.

(A) The State Public Defender

This office handles all "post-conviction" cases in the District Courts in Minnesota, and all criminal appeals to its Supreme Court. A "post-conviction" case is one in which a person, presently in custody under sentence of a court, brings proceedings to set the sentence aside on the grounds that it is, in some way; illegal. This office does not, accordingly, handle cases on behalf of indigent accused persons at the initial trial. At the trial level the district public defender will act.

The above statement is subject to one qualification. By special arrangements made between the state public defender's office and the municipal authorities in Hennepin County, the state public defender's office does handle a large amount of criminal, and quasi-criminal, trial work in the Municipal Court (comparable to the Magistrates' Court in Saskatchewan) of that county. Presently there are four assistant state defenders handling these matters in that court.

The state public defender's office is, in general, connected with the district public defender system in each of the following ways:

(1) It provides district defenders with legal consultation, investigative services and trial assistance.

(2) It is responsible for the training and continuing legal educ-

ation in the criminal justice field of all district, as well as state, defenders.

(3) It acts as a spokesman for all defenders, both district and state, in budget matters, law improvement progress, innovations and reform in the courts, and in legislative matters dealing with the criminal law and procedure.

The state public defender's office also plays a significant role in the field of legal education. Through its connections with the Hennepin County Municipal Court, as above noted, it supervises senior law students from the Law School of the University of Minnesota who assist in defending persons accused of minor offences in the Municipal Court.

The head of the state public defender system is appointed by an agency known as the State Judicial Council, for a term of four years. He can be removed from office only for cause and only by the Judicial Council. That Council is made up of eleven people, including the Chief Justice of the Minnesota Supreme Court, two District Court judges selected by the members of that bench, one Juvenile Court judge selected by his fellow judges, and seven other persons (one of whom at least must be a Municipal Court jduge) appointed by the State Governor for three year staggered terms. It is recognized that this agency insulates the state public defender system from any kind of political patronage.

The head of the system (called the "state public defender"), appointed as above, has the right to employ assistant state public defenders, and other staff. All such appointments, however, are subject to the approval of the Judicial Council.

In addition to the state public defender there are, at the present time, eight regular assistant state public defenders, as well as a small office staff.

(B) District Public Defender System

Geographically, Minnesota is divided into ten local judicial districts, ranging in size from one to seventeen counties, and in population from about 200,000 to 1,000,000. The Minnesota legislation makes provision for each of these districts to have a public defender and such assistant defenders as are needed to represent indigent persons accused of crime, including statutory and traffic offences.

The legislaton provides that a majority of the judges of any judicial district may, through a written order filed by them with the above noted Judicial Council, establish in their district a state public defender system. The statute further provides that, upon the above order being filed, the Judicial Council is then to appoint a district public defender after receiving recommendations from the judges of the district involved. The district defender is to be appointed for a term of four years and may only be removed by the Judicial Council, for cause.

District defenders, and assistants where appointed, are private practicing attorneys, compensated on an annual retainer fee basis. There are presently fifty defenders in the districts in Minnesota.

The compensation, and expenses, of these district defenders are paid by the county or counties which make up the judicial district involved. The legislation, in this connection, gives to the judges of the district the power to determine, and certify to the municipal authorities in the counties, what the annual budget for the office of the district public defender is to be. The statute further provides that, upon this budget being set (and apportioned between or amongst the counties on a per capita basis), the municipal authorities in each are required to pay the amount involved in monthly installments.

The district public defender system covers eight of the ten judicial

districts. The remaining two (being the third and eighth district) have an "assigned counsel" system.

COVERAGE UNDER THE DEFENDER SYSTEM (BOTH STATE AND DISTRICT)

As noted above, these systems are limited to the provision of legal aid with respect to criminal matters. Neither extend into the area of civil law. The criminal coverage, however, is very extensive. It embraces what a Canadian lawyer would call both indictable and summary conviction offences under the Criminal Code of Canada, or any federal statute. It also covers the defence of what, in this country, we would call provincial offences and, indeed, many cases involving charges under municipal bylaws. The word "criminal", in other words, has to be given a very wide meaning in this context.

As appears from the earlier sections in this chapter, the system (through the state office) also covers all appeals in criminal matters on behalf of indigent accused persons.

ELIGIBILITY

It appears that the only criterion is the inability of an accused person "by reason of poverty to pay the expenses to be incurred in presenting" his case to the court.

It is the function of the State Public Defender Office, in cases handled by it, to make the determination as to whether or not an applicant is of "pauper" status. In the District Public Defender system it is the responsibility of the court or magistrate before whom the accused person appears to make the necessary enquiries as to financial eligibility.

All of the above is subject to the power of a court, at any stage of the proceedings, to cancel the appointment of a public defender in the event

that it finds that an accused person can, indeed, pay the costs of his own defence.

COST OF THE SYSTEM

The cost of operation of the State Public Defender Office has been incredibly low. The 1970 report of that office to the Judicial Council shows that the cost in the twelve month period commencing July 1, 1970, was only $174,000.00.

The 1972 budget for the District Public Defender system, in the eight districts where it functions, is $518,769.00.

The 1971 budget for those two districts where an "assigned counsel" system is in operation was $115,498.00.

It was of interest to the committee to learn that the State Public Defender feels that the average cost per case handled in the District Public Defender system ought to be approximately $100.00. In reviewing budgets, he looks with particular concern at any district which goes too far above, or below, that figure. In that connection, the actual cost per case handled by the State Public Defender system in 1971 was as follows:

District No.	Cost per Case
1	$196.00
2	112.00
4	61.60
5	207.00
6	266.00
7	191.00
9	134.00
10	155.00

In the two remaining districts where the "assigned counsel" system operates, the 1971 cost per case was $438.71 and $190.90.

ASSESSMENT OF THE PUBLIC DEFENDER SYSTEM

The chairman, another member of the committee and its secretary spent three days in Minneapolis, Minnesota, examining something of the operation of the public defender system in that state.

The committee members were universally, and most highly, impressed with the calibre, and quality, of the attorneys whom they met, acting within either the state or district public defender system. Each of them is a highly motivated, extremely competent professional person. This is notably true of the state public defender, Mr. C. Paul Jones. He is a front-rank attorney, with a deep and abiding concern for the proper implementation of the constitutional guarantees which are so vital to the administration of justice in his country.

It is inevitable that any system for the provision of legal aid will be open to some criticisms. In what follows, the committee records its reservations about the Minnesota systems. None of its comments, however, are intended in any way to suggest personal criticism of any of those dedicated people charged with the administration, and operation, of the public defender offices.

It was evident to the committee members that the state public defender system lacks sufficient funds. For one thing, the office accommodation for the state public defender himself, and his staff, is totally inadequate. Lack of sufficient financing by the state was made even more evident by what the committee members saw of the operation of the public defender system in the Hennepin Municipal County Court. As noted above, and by virtue of special arrangements, the state public defender office furnishes trial services in that court. The committee members spent a morning sitting in it. Scores of cases were, on their first appearance, dealt with. The four public defenders acting in the court had no facilities at all to interview indigent persons assigned to them. These public defenders appeared at approximately 8:00 o'clock in the morning in the

court room, and attempted to find out who would be requesting their services. Each had to attempt to interview some twenty to thirty people who were arraigned in court. Each interview consisted of the public defender taking his client off to some portion of the crowded court room to find out something about his case.

The defender staff advised us that, without office facilities and by reason of caseload, they rarely if ever had an opportunity of any real interview with a client before later proceeding to defend him at his trial. At best, they advised the committee members, they might be able to have a chat by telephone with him.

In addition to lacking office facilities, these public defenders had one secretary between them who had to attempt to do all the work for all four of them.

Each of these assistant public defenders was a young attorney. They advised the committee members that they felt that working for one year in the public defender's office was "all that anyone could stand" and that "one tended to burn out after that year".

Committee members were told that, in the Hennepin Municipal Court, the public defender's office will handle about 550 interviews a month. Out of that total, some 400 cases will be accepted for trial.

As noted earlier in this chapter, there certainly is provision in the public defender system in Minnesota for continuing education as far as the professional staff of the system are concerned. The whole approach of a public defender system, however, is such that one does not expect to see any provision for public eduction with respect to legal rights and obligations. Not surprising, accordingly, this is absent in Minnesota under its system.

SECTION 10 -
ENGLISH LEGAL AID SCHEME

I. GENERAL

England pioneered in the field of publicly funded legal aid schemes. Its program provides for the delivery of legal assistance by private practitioners on a fee-for-service basis. That statement is subject to one qualification. Under The Legal Advice and Assistance Act, which will be implemented in April 1973, provision is made for the development of something approaching legal aid clinics. That statute is discussed later in this chapter.

(A) The Administration of the Scheme

In England and Wales legal aid and advice are available by statute to anyone of small or moderate means who satisfies the required conditions. The legislation is contained in the Legal Aid Acts 1949 to 1964, a number of sets of regulations made by the Lord Chancellor, a scheme made by The Law Society and certain rules. All these are made under powers conferred by the Acts.

The Law Society is responsible for the administration of the scheme and for ensuring that facilities for legal aid and advice are available throughout the country. It carries out its task under the general guidance of the Lord Chancellor, who is assisted by an Advisory Committee consisting of persons appointed by him for their knowledge of social conditions and of the work of the courts.

Many of the Law Society's functions are performed by a specially constituted committee of the Council of the Society, the Legal Aid Committee, comprising members of the Council, a number of barristers nominated by the General Council of the Bar and a nominee of the Lord Chancellor.

For administrative purposes the country is divided into thirteen areas, each with an area committee consisting of practicing solicitors appointed by the

Council of the Law Society after consultation with local law societies and practicing barristers appointed by the Council on the nomination of the Bar Council.

Area Committees are responsible not only for the quasi-judicial and administrative functions placed on them by the Act, the regulations and the scheme, but also for the general administration of the scheme in their area and for the appointment of Local Committees consisting of practicing solicitors and barristers.

The main duty of Local Committees is to consider applications for legal aid in courts of first instance. This function is performed on their behalf by Certifying Committees, which are sub-committees consisting of not more than five nor less than three members of a Local Committee, of whom, where possible, one is a barrister.

The Law Society is responsible for establishing and maintaining a legal aid fund from which expenses are met and into which all receipts in connection with the running of the scheme are paid. The scheme is financed in part by moneys voted annually by Parliament, partly by contributions from persons who receive legal aid and advice under the Acts and who are normally referred to as "assisted persons", partly by costs and damages payable by unsuccessful opponents of assisted persons and partly by solicitors and counsel who, in legally aided cases in the House of Lords and the Supreme Court, accept a reduction of ten percent in their fees.

(B) Distinction - Legal Advice and Legal Aid

The legislation provides for three different kinds of professional help: legal advice, legal aid in claims (that is, matters not involving litigation) and legal aid in proceedings. In the first two of these assistance is given only by solicitors; in the third the services of counsel are also available

whenever they are needed. In every case the advisers are practitioners in private practice; no one is employed on a salary to give legal advice or legal aid.

Legal advice consists of oral advice on questions of English law. Legal advice includes help in preparing an application for legal aid and in supplying information required for determining an applicant's disposable income and capital. To receive legal advice under the scheme, a person has to satisfy the solicitor that he selects from the panel of solicitors rendering legal advice, that he cannot afford to obtain legal advice in the ordinary way. To be granted legal advice, an applicant cannot have capital of more than £125 ($305) nor an income of more than £9.50 ($23) in the week immediately prior to his application. Capital and income are calculated with certain reductions, but they normally include resources of the applicant's spouse.

If the applicant is receiving supplementary benefits (welfare benefits), he is entitled to free legal advice, otherwise he must pay 12½p (about 30¢) for the interview, which should not last more than an hour and a half for any one topic.

There is also a voluntary scheme supplementing the statutory legal advice scheme under which anyone is entitled to receive not more than 30 minutes of legal advice from a participating lawyer. The fee payable is £1 and the solicitor receives no other remuneration.

There is provision for legal aid for matters not involving litigation, eg. negotiations and writing letters, but it is usually found easier to issue a certificate for legal aid for proceedings up to but excluding the issue of a Writ.

Legal aid in proceedings includes all professional help as is normally given in the steps preliminary or incidental to any proceedings or in settling

or compromising an action. As the name implies, legal aid in proceedings also includes aid in litigation, providing compensation for both solicitor and barrister. It includes all professional help as is normally given in the steps preliminary or incidental to any proceedings or in settling or compromising an action.

(C) Criminal Legal Aid

Legal aid in criminal matters is provided for largely by the Criminal Justice Act 1967. This Act provides that a judge or magistrate, hearing an appeal or trial in any court may grant legal aid. A few criminal courts are covered not by the Criminal Justice Act but by the Legal Aid Act, eg. Divisional Court of Queen's Bench Division. This necessitates an application for legal aid to the area or local committee instead of to the court as is true with most applications for criminal legal aid.

The discussion which follows deals with civil legal aid under the Legal Aid and Advice Act of 1949 only. This includes, of course, the exception mentioned above, by reason of which a few criminal matters fall under the above Act.

Unless otherwise mentioned, the discussion deals with legal aid in proceedings, as almost all certificates granted for assistance fall into this category.

II. LEGAL AID IN CIVIL PROCEEDINGS

(A) When Legal Aid Available

Legal aid is available in connection with all civil proceedings in the House of Lords, the Supreme Court, in county courts and in certain local courts. It is available for original and appellate proceedings, the only

important exception being ones based on defamation. Legal aid is also available in magistrates' courts and at quarter sessions in connection with certain cases which are mainly of a domestic nature, such as separation and maintenance, guardianship of minors and affiliation proceedings. The only administrative tribunal for which it can be granted is the Lands Tribunal.

(B) Financial Requirements

Eligibility for legal aid in proceedings depends on the amount of a person's disposable income and disposable capital. Disposable income is the income after prescribed allowances have been made for such matters as rent and rates, income tax, maintenance of dependants and expenses of employment. There are also discretionary allowances for commitments on hire-purchase items, for domestic help and under special circumstances (the committee was interested to note) for maintenance of mistresses. Disposable capital is a person's gross capital after making certain prescribed allowances in respect of dependants and debts. An allowance is made also in the case of personal property, household effects, clothing and tools of a trade. The value of a dwelling owned by the applicant is ignored unless, after deducting the amount of any mortgage, it exceeds £5,000, in which case one half of the excess is normally taken into account. An applicant's resources are treated as including those of his spouse unless the parties have a contrary interest in the dispute, as in matrimonial proceedings, or because for some other reason it would be unjust for their resources to be aggregated. In all cases the value of the subject matter of the dispute in respect of which application has been made for legal aid is excluded. Determination of an applicant's financial resources is carried out by the Supplementary Benefits Commission (Welfare Department) whose duty it is also to determine the maximum amount which he can be called on to contribute towards his own costs.

Legal aid for proceedings is available to persons whose disposable income does not exceed £950 ($2300) a year and whose disposable capital is not more than £500 ($1200). If the latter exceeds this figure legal aid may be granted only if the estimated costs of the proceedings are likely to exceed the applicant's maximum contribution.

The allowances and deductions which are made from an applicant's gross income are such that, for example, a man with a wife and three children, earning £2,150 ($5,250) a year, may be eligible for legal aid.

For persons with small incomes legal aid is free; for others the scheme is a contributory one. If a person's disposable income does not exceed £300 ($730) and his disposable capital is not more than £125 ($300) he is entitled to receive legal aid without contributing towards the cost. If his resources exceed these figures he will be liable to pay a contribution from income not greater than one-third of the amount by which his disposable income is in excess of £300 a year and a contribution from capital not greater than the amount by which his disposable capital exceeds £125. This is his maximum contribution to the costs of his legal representation. The legal aid plan pays for any excess over this amount.

Contributions from capital have normally to be paid in single lump sum; those from income are payable by monthly instalments. If an applicant's income changes appreciably within twelve months of his application for legal aid, or his capital increases by an appreciable amount within three years and his certificate is still in force, a redetermination will normally be made by the Commission. All costs recovered on behalf of an assisted person are paid to the plan.

The Law Society normally has a statutory first charge for the balance of any damages or other property which are recovered for a legally assisted

person in the proceedings. The Law Society retains the costs recovered and a sufficient amount of damages to balance the assisted person's account before paying the remainder to him.

III. ROLE OF LOCAL AND AREA COMMITTEES

(A) The Scheme in Operation

An application to take proceedings in a court of first instance may be made to any Local Committee; for proceedings in an appellate court application must be made to an Area Committee.

On receiving the application, the secretary of the committee must arrange for the committee to determine the applicant's financial resources. An application for legal aid for proceedings in a magistrates' court can be granted by the secretary of a Local Committee on his own authority, but such an application may be refused only by the committee. All other applications must be determined by the committee.

When considering an application the approach which members of a committee adopt is to try to decide what advice they would give the applicant were he their own private client, in possession of sufficient means to pay his own costs. Legal aid will then be granted to the extent necessary to give effect to that hypothetical advice. Any reasonable doubt should be resolved in favour of the applicant. This approach is based on s. I (6) of the 1949 Act which provides a dual test. First, a person is not to be given legal aid in connection with proceedings unless he shows that he has reasonable grounds for taking, defending or being a party to them. Secondly, he may be refused legal aid if it appears unreasonable that he should receive it in the particular circumstances of the case.

When an application is granted, the terms including the amount the

applicant is assessed as being capable of paying are mailed to him, and the applicant can accept or reject the offer as he wishes.

If a committee refuses an application for legal aid, they must give notice to the applicant who then, if the decision is that of a Local Committee, will have a limited right of appeal to the Area Committee. He will in certain cases also have a right of appeal if he is dissatisfied with the terms on which a certificate has been offered to him.

(B) Emergency Certificates

Where an assisted person requires legal aid as a matter of urgency, an emergency certificate may be issued by the secretary of the appropriate Area or Local Committee, along with a means test. Such a certificate is temporary only and expires within a specified time period.

(C) Panels

The Law Society maintains panels of solicitors and barristers willing to represent assisted persons. An applicant for legal aid must choose a solicitor from the panel and a certificate cannot be issued to him until he has done so.

(D) Unnecessary Proceedings

If the solicitor feels that his client should not continue the action, he has the right to refuse to act any further for his client, and must report his doubts to the Area Committee. If he has doubts about continuing the case, but does not wish necessarily to stop acting for his client, he has the right to let the Area Committee decide whether to continue legal aid or to withdraw aid.

(E) Costs - Against Assisted and Unassisted Persons

The 1949 Legal Aid Act limits the liability of an assisted person to pay costs under any order which is made against him. The limit is the amount, if any, which the court considers it is reasonable for him to pay, having regard to all the circumstances including the means of the parties and their conduct in connection with the dispute. There is provision in the 1964 Act for payment of costs to a successful unassisted opponent of an assisted person, the successful party being unassisted.

The remuneration of solicitors is broadly the same as that paid by private clients, save for a ten percent reduction for solicitors and counsel in the House of Lords and in the Supreme Court.

IV. ASSESSMENT OF THE SCHEME

(A) Legal Advice

The Legal Advice and Assistance Act, due to be implemented in April 1973, will significantly reduce one of the outstanding weaknesses of the English scheme, the lack of legal advice as opposed to legal aid in litigation. This situation arose because the plan has been hampered by a shortage of funds since its inception. As a result, the total plan was introduced bit by bit, and the provisions that were related to the providing of legal advice were never implemented.

Further, the legal advice scheme presently operating in England is hampered in its objective of assisting persons who cannot afford to see a lawyer by its low financial limits. Inflation has eroded the eligibility criteria.

(B) The £25 Scheme

The Legal Advice and Assistance Act is often referred to as the £25 scheme. When it comes into operation in April 1973, it will provide for advice and assistance, but not litigation, estimated by the solicitor consulted to cost not more than £25. The applicant will apply for the assistance at the office of the solicitor that he chooses. The solicitor will assess eligibility.

It is important to note that this scheme is based on the estimated cost of the solicitor's time in dealing with the problem presented (short of litigation). It is not based on the financial amount that is in dispute. The English authorities hope that this scheme, when implemented, will place the poor person in a similar position to a "paying client". He will be to visit his solicitor's office and receive assistance without visiting other offices. Some people connected with legal aid in England feel that this scheme will encourage lawyers to open offices in poorer areas of urban centres, particularly London, which are under-served by private practitioners.

(C) Liaison Officers

The other provisions of the Legal Advice and Assistance Act are somewhat confusing. They provide for "liaison officers" between social service bureaus and solicitors. These officers would be solicitors, and at a minimum would provide coordination between these citizens' advice bureaus and the legal aid scheme. The liaison officers would assist the legal aid applicant in his search for a solicitor to handle his case. This much is clear. However, the Act also provides for the possibility of the liaison officers giving legal advice and assistance. It is also suggested that in areas of need, the solicitors will handle all the cases that would fall under the £25 limit, and in some cases under this plan there would be a fully fledged solicitors office

authorized.

If this last suggestion is adopted, the result would differ little from a legal aid clinic. Lawyers would be working in a poor neighbourhood, they would be paid a salary, and would devote full time to legal aid problems.

In any event, the proposals for a liaison officer recognize the problems that persons, and particularly poor people, have in being referred from agency to agency, and office to office. These officers could go some way towards overcoming the psychological and physical barriers to a poor person seeing a lawyer, barriers such as the alien surroundings, the referrals from office to office, and the distant and unknown down-town lawyers office.

Chapter III

EXISTING PROGRAMS OF LEGAL AID IN SASKATCHEWAN

SECTION 1 - THE SASKATCHEWAN CRIMINAL LEGAL AID PLAN

HISTORY

Prior to 1967, a Saskatchewan resident accused of a criminal offence and unable to pay for his own defence could obtain counsel only if he found a lawyer who was willing to act without charge. While it has never been accurately documented, without question may thousands of volunteer hours were spent in the province, before 1967, by rural and urban lawyers in defending accused persons without fee. The foregoing is subject to one qualification. Commencing in the late 1950's the Department of the Attorney General adopted a policy of paying the fees of counsel when appointed by a judge to defend an accused person charged in his court. This, however, was basically limited to serious charges.

In time, it became apparent that the Bar could no longer handle the criminal caseload of those unable to pay for their services on a purely volunteer basis. As a result, negotiations were entered into by the Law Society of Saskatchewan with the Attorney General for the province. These negotiations continued for some years without success. Finally, in 1967 agreement was reached and a plan formulated. The 1967 Saskatchewan Legal Aid Plan (Criminal Matters) has remained basically the same to the date of this report, with two exceptions. First, in 1969 a directive was issued from the Attorney General's Department limiting the number of times a person could receive legal aid to two per year. Second, in April of 1971, the coverage of the plan was extended to include persons charged with offences under the federal Food and Drug Act. The schedule of fees paid to lawyers for work done under the legal aid plan has remained the same as it was in 1967.

STRUCTURE AND OPERATION OF THE 1967 PLAN

The 1967 plan took the form of an agreement between the provincial Attorney General's Department and the Law Society of Saskatchewan. An amendment

to the Legal Professions Act in 1967 had extended the powers of the Benchers of the Law Society to make rules and bylaws;

> "for the establishment and operation of a plan or plans under which the legal services of any members of the Society in respect of civil or criminal matters shall be made available to indigent persons."

On June 30, 1967, a directive went to all lawyers in the province setting out the details and rules of the Plan, as set out in the above ageeement.

THE PLAN ON PAPER

1. Administration

The Plan visualized that the day to day operation of the scheme would be carried on by local legal aid committees, which were to be formed in various judicial districts across the province. The members of these committees were to be lawyers chosen from the local legal aid committee area. Service on the committee by the lawyers was to be voluntary.

Along with the rules of the Plan, a schedule of fees payable to lawyers for work done under the Plan was prepared by the Attorney General's Department and the Needy Persons Committee of the Law Society of Saskatchewan and distributed to members of the Bar.

The rules set out the functions of the local legal aid committees. The committees were to be responsible for (a) interviewing accused persons who requested legal aid, (b) determining if the accused person was financially eligible to receive legal aid under the criteria set out in the rules of the Plan, (c) to "designate and appoint counsel" to represent the accused person after a finding that the offence was one that came within those covered by the Plan and that the person was financially eligible for legal aid, (d) keeping reports on the operation of the Plan.

2. Criminal Matters Covered by the Plan

The following criminal matters are covered:

(a) Prosecutions under the Criminal Code of Canada punishable by imprisonment;

(b) Prosecutions under the Narcotic Control Act and the Food and Drug Act;

(c) Prosecutions under the Juvenile Delinquents Act;

(d) Prosecutions against juveniles on the request of the presiding judge;

(e) Bail applications in courts higher than Magistrates' Court;

(f) The providing of legal advice in instances where bail has been granted and cannot be obtained due to the confinement of the applicant;

(g) Appeals arising out of the above. In these cases, counsel must submit a written application to the local legal aid committee who must be satisfied that the grounds of the appeal do not constitute questions of fact only, and that the appeal has merit.

(h) Where an application has been made against a person for a sentence of preventive detention as an habitual criminal or as a dangerous sexual offender.

Thus any person brought before a court for any of the above matters comes within the ambit of the Plan providing he is found to be financially eligible.

3. Eligibility

The rules of the Plan set out the eligibility requirements that a local legal aid committee is to use when an accused person makes an application for legal aid. The rules state that any single person earning less than $2,000

annually and any married person with a yearly income of less than $2,500 (plus an additional $300 for each dependent other than a wife) is financially eligible for legal aid. This is subject to the proviso that the applicant has not sufficient disposable income or assets to pay for the legal services which he requires. Also, any person of twenty years of age or younger is eligible to receive legal aid only if he lives away from home or if an enquiry has been carried out to ascertain the means of the parents and it has been determined that they cannot or will not provide and pay for adequate legal representation for the applicant.

A person not coming within the strict eligibility requirements set out above might still receive legal aid, if the local legal aid committee determines that

> "the applicant, if required to pay for legal services would have insufficient means, after taking into account his commitments and probable cost of defence, to enable him to pay for adequate representation."

4. Further Exclusion

In 1967, a directive was issued out of the Attorney General's office to the effect that legal aid could only be given to any one individual twice in a given year.

5. The Roster System of Appointing Lawyers to Cases

The Plan states that defence counsel, who make themselves available for legal aid work, are to be appointed to cases by the local legal aid committee on a rotation or roster system. To use the words of the Plan:

> "The roster will be kept up-to-date by showing which lawyers have been appointed under the Plan on previous occasions. It is highly desirable that except in very unusual cases no member of the Bar be assigned more than one case until all members have had at least one appointment.
>
> Some regard should be had to the lawyer the applicant would

prefer as is shown on his application from, but only if that lawyer has not been previously consulted since otherwise this system may render itself to abuse."

As previously stated, the local legal aid committees are charged with the responsibility of interviewing an accused person and appointing a lawyer for him. Thus, after a committee member has interviewed a client and found him eligible, he is to phone the lawyer appointed and set up a time when the accused person is to see him.

The rules also suggest that when a lawyer is being assigned to a case some consideration should be given to the difficulty of the case and the experience of the lawyer.

6. Other Matters

The rules also spell out other provisions which are as follows:

(a) The Crown, at the request of the defence lawyer, should arrange to have witnesses called to attend or subpoenaed to testify in court on behalf of the accused.

(b) If a defence counsel feels that he requires expert witnesses to properly present his case, provision can be made to have them paid provided prior consent of the local legal aid committee is obtained.

(c) Transcripts of evidence of past hearings or cases being appealed from are to be provided at government expense to assist the defence counsel presenting the case.

(d) A client may be asked to contribute to some portion of the cost of his defence even though he be otherwise eligible within the requirements set out by the Plan.

(e) An applicant who is found eligible but who comes into money or assets while being defended may be disentitled by the local

legal aid committee from receiving further legal aid.

(f) Legal aid counsel may withdraw from a case, but written approval of the local legal aid committee must first be secured.

7. Accounts and the Attorney General's Office

Under the Plan, the lawyer doing legal aid work is instructed to submit a bill or account in accordance with the schedule of fees under the Plan to the secretary of the local legal aid committee in the district. The secretary then is to keep a copy and forward the account to the Attorney General's office for payment.

8. General

At the outset, local legal aid committees were to be set up at Regina, Saskatoon, Prince Albert, Moose Jaw, Yorkton, Melville, North Battleford, Weyburn, Swift Current and Estevan. A secretary for each committee was provided by a direction from the Attorney General's office requiring local court house staff in each of the above mentioned districts to act in this capacity. The task of the secretary is to make sure that an ample supply of the application forms is kept on hand at the court house and in all local jails, and to make sure that all the local police forces are contacted regularly to see if any applications are waiting to be processed. Local secretaries are also to be available to answer general enquiries by the public about the Plan. The secretary is not to do any interviewing, as this is to be a function of the lawyers on the local legal aid committee.

Judges of the Magistrates' Court are also supplied with legal aid forms and are instructed to take legal aid applications when requested or when the need should arise.

THE PLAN IN ACTION

The Plan on paper and what has actually come about through practice and expediency are in some respects quite different. Each particular local legal aid committee has to a greater or lesser extent deviated from the original rules as set out in the Plan.

1. Administration

Numerous modifications of the original administrative ideal have been made for various reasons. Interviewing officers, although not contemplated by the rules, have been hired in Regina, Saskatoon and Prince Albert. The rules stipulate that financial eligibility is to be a matter determined solely by the solicitors who make up the local legal aid committee. However, because of the much larger caseload in the three above mentioned urban centres, the local committees requested that interviewing officers be retained on a full-time basis and that they should determine eligibility. The three persons appointed are not lawyers despite the stipulation in the Plan that lawyers should do all interviewing.

The responsibility of each interviewing officer varies from centre to centre. In Saskatoon and Regina, where there are active local legal aid committees, the interviewing officer makes most of the decisions in respect to eligibility and in all the routine cases assigns lawyers to the particular cases. Borderline financial eligibility questions are decided by the local legal aid committee. In Saskatoon, both the full-time interviewer and the local legal aid secretary, who is the registrar for the local judicial district, sit as full voting members on the committee.

In Prince Albert, the interviewing officer plays a more significant role, albeit by default. The reason for this is that in Prince Albert the local legal aid committee is largely inactive. The interviewing officer makes

all the decisions with respect to eligibility. He also decides what appeals should be allowed, although he may consult on such matters with the Attorney General's Department in Regina. He also looks after the roster system and the assigning of counsel. On the whole, the interviewing officer is almost solely responsible for the operation of the legal aid plan in that city, in the surrounding district, and as a practical matter in the whole vast northern portion of Saskatchewan. Because Prince Albert lawyers do much of the legal aid work in northern Saskatchewan, most of the applications for legal aid come through the Prince Albert office and are the responsibility of the full-time interviewing officer. The interviewing officer is also apparently the secretary of the local legal aid committee, although it seldom meets.

Local legal aid committees in many other centres are also quite inactive. In Swift Current and Melville, any lawyer will conduct the interview and determine eligibility. In Swift Current, the lawyer who conducts the financial eligibility interview will usually assign himself to the case, unless the applicant has a particular preference. In Estevan, there are only two law firms. One does not handle legal aid cases as it is the agent for the Attorney General. As a result, this firm interviews applicants and assigns a lawyer from the other firm to act as defence counsel. In Weyburn, most applications are taken by the local registrar in the court house and then forwarded to a solicitor who determines if the applicant is eligible. Most applicants in that area ask for a specific lawyer so it is necessary to make an actual assignment of a lawyer only in rare cases. In Yorkton, most of the legal aid work is handled by the assistant registrar or by a local lawyer. Many applications come directly to a particular local lawyer who is resident at Kamsack, and often applications in that area are not made out until after the case has been completed.

2. Eligibility

While there are specific monetary guidelines set out for determining financial eligibility by the Plan, it is apparent that these guidelines are not being followed in all areas. In Saskatoon, and in some other areas, persons charged with the interviewing felt that the criteria were too low, given the present cost of living. Concern was expressed that the criteria were too rigid and did not allow necessary flexibility. In many instances, persons with little or no money on hand may have earned above the maximum figures within the year, but because of bad luck, debts, or inability to manage money, they would be unable to hire legal counsel at the time of the interview.

It was the opinion of those of the committee's staff who discussed the eligibility aspect of the Plan with various interviewers that the strict monetary guidelines were being substantially bent to allow more persons to be eligible than might strictly be the case if the rigid guidelines were followed to the letter.

Some persons involved with the local legal aid committees were of the opinion that people who owned vehicles should not receive legal aid, especially for impaired driving offences. Some felt that impaired driving charges should not be covered by the criminal legal aid plan at all, while others were of the opinion that such charges, which of necessity could involve possible loss of economic livelihood for the individuals involved, were important enough to require that these offences be included.

Abuse of the Plan by falsifying eligibility information was not seen, by those administering the Plan, as a major problem. The three full-time interviewers felt that they soon came to know their clients as a group. Some limited checking was done by the Saskatoon interviewer, but he felt that abuse was not

common. One local legal aid committee chairman did express dissatisfaction with an incident some years ago where the Attorney General was invited to, but did not, prosecute four persons for making false affidavits as to their financial means. He felt that this would have been a deterrent to other people doing the same. Most legal aid committee members felt that any extensive scrutiny of financial eligibility would be uneconomical.

A matter which concerned local legal aid committees had to do with applications for legal aid by persons still residing at home and under the age of twenty. The rules of the Plan state that such a person would be found eligible only after an enquiry was carried out to ascertain the means of the parents to pay for adequate representation for the accused. The problem is that some parents refuse to pay for counsel for a young person living at home even though the parents are financially capable of doing so. This of course leaves the young accused person in a difficult position. Various local legal aid committee personnel had different opinions on the issue, but in most cases they felt that it was better to grant the young person assistance rather than let him go without defence counsel, as there was no way of forcing the parents to pay.

3. Criminal Legal Aid in Rural Areas

It was the general feeling of most persons contacted that the criminal legal aid plan operated fairly successfully in the major cities. However, in rural areas many of the local legal aid committee members, and numerous judges of the magistrates' court, felt that the criminal legal aid plan was not working as satisfactorily.

The main complaints were (1) a lack of lawyers in rural areas, (2) a schedule of fees payable to lawyers for work done which was not compensatory, including the fact that no allowance for travelling time is made, and (3) some

rural solicitors are not willing to take criminal legal aid cases as they do not involve themselves in a criminal practice.

During the committee's enquiries in the Yorkton-Kamsack district, one person cited an example of what was felt to be discrimination against rural people. The example given was that of an accused person living in the Canora or Kamsack area who wished to choose a lawyer from Yorkton. That accused person would be forced to convince the Yorkton lawyer that it was worth his while to travel to Canora or Kamsack for the accused's case without any remuneration for travel time under the Plan. A client in Yorkton, however, would not be faced with the same problem as the solicitor's office was close at hand. This problem was cited to the committee in many centres throughout the province, as lawyers feel that under the present tariff they simply cannot afford long hours away from the office for cases when much of the time is spent in travelling and is not paid for.

Another difficulty was pointed out to the committee by magistrates sitting in rural areas. Some of them feel that it is not a good idea for them to be charged with the administration of the legal aid plan in areas where no local legal aid committee exists. The committee was told that in these areas it is up to the local magistrate to keep an eye out for those persons wishing or needing legal aid. The magistrate then carries out a short interview with the accused person to determine eligibility, and arranges a lawyer for him. At least one magistrate told the committee that he felt this system is prejudicial in one way or another to the accused, since when the matter came on for trial he finds it very difficult to be objective, given the fact that after carrying out the financial eligibility interview he usually knows much of the family and social background of the particular accused. The magistrate also complained that the administration of the Plan was an added paperwork

burden on rural magistrates, who are not blessed with the services of a secretary.

4. Contributions by Clients

Although provision for client contributions of a portion of the cost of their case is allowed under the rules of the Plan, only Prince Albert is apparently following this practice. It appears in Prince Albert, in some cases, that the client is asked to contribute some part of the lawyer's fees directly to him. This is subject to scrutiny by the local interviewing officer in that district. Some members of other local legal aid committees felt this to be a desirable end, but many did not seem to be aware that this was possible under the rules of the Plan.

5. The Twice a Year Rule

As noted earlier, an amendment was made in the Plan in 1969 by the Attorney General, apparently as a response to criticism that the Plan was being abused. It sets out that an accused person cannot receive legal aid more than twice in the same calendar year. Many of the local legal aid committee members criticized this rule, feeling that a person may be subjected to an unjust charge, but if it happens to be the third charge that year and the accused had obtained legal aid on the previous two charges, he would be excluded. While some felt that the rule was necessary to discourage hardened criminals, all agreed that it could work a serious hardship where a person was innocent on the third occasion.

6. The Roster System

The original emphasis under the Plas was clearly on the rotation or roster system. It soon proved itself unworkable in many areas of the province. In some instances, complaints were received from accused persons that they were not able to obtain the lawyer of their choice. They also complained that they

were not receiving adequate representation due to the fact that counsel appointed under the criminal legal aid plan were often very junior. Inexperience was related mainly to the age of the lawyers appointed but in some cases the person complained that more senior counsel were not experienced in the criminal law field.

Also, some lawyers objected to the fact that clients, whom they had acted for in the past and who had indicated a preference for their services, were being assigned to other lawyers on the basis of the roster system. In some districts, local legal aid committees heard complaints from lawyers that they were exercising favouritism in assigning cases if the roster system was not kept in a fairly delicate balance.

All this lead to the position which most legal aid committees now appear to occupy; that an accused person is indeed given a choice of counsel and the committee attempts to arrange for that counsel to act. If a person does not wish to choose his lawyer, then the roster system continues in use.

Another point of contention relates to the rule that an accused person who first sees a lawyer and then seeks legal aid cannot have that lawyer act for him. In some cases this rule is just not followed. In other areas lip service only is paid to it. In still others it is strictly enforced.

7. Government's Attitude Towards the Plan

The view was expressed to the committee by some that the criminal legal aid plan had been conceived of hastily, with some political motivation and little real commitment to the ideal that a legal aid plan should improve the administration of justice in its entirety in the province. While this may or may not be, government action, or lack thereof, since the inception of the plan, indicates that criminal legal aid has not been a major priority.

First, it was agreed by the Department of the Attorney General in

1967 that the original schedule of fees should stand for one year only. To this day it remains as it was in 1967 despite yearly representations by the Law Society of Saskatchewan to have the schedule raised in order to make it at least partially compensatory. Almost all practitioners contacted expressed a concern with the inadequacy of the tariff. A number felt that the reason for some of the difficulties of local legal aid committees and interviewers in finding lawyers to act for legal aid clients was due to the lack of a compensatory tariff.

For example, under the schedule any lawyer with less than ten years of experience receives only $20 for a case where an accused person enters a guilty plea, irrespective of how much work the lawyer has done. In some instances, a proper interview with the client and with witnesses in the case may take many hours of the lawyer's time. In addition the case may require researching points of law which may arise in considering whether a guilty plea should be entered. The lawyer still receives $20 irrespective of whether or not he has done such work. Many lawyers complained that this gives little incentive beyond professional integrity to put forth the kind of effort required in many legal aid cases. While the lawyers did not suggest that legal aid clients were receiving second rate service because of this, they did say that by reason of it a number of lawyers were hesitant to take on legal aid cases.

No fees are paid for preparation for a trial or an appeal. A specific example of this is shown in a letter of March 10, 1971, which was written by the then Attorney General to the Saskatoon local legal aid committee. This was a murder case where leave was being sought to appeal a point of law to the Supreme Court of Canada.

> "If your committee does decide to grant leave to appeal, we would pay actual out-of-pocket expenses in connection with the appeal including air fare, hotels and meals, and $100 for each half day in which the case is before the Supreme

> Court of Canada. In this particular case, I am not prepared to authorize any additional fees by way of preparation or otherwise."

While the particular quote uses the words "in this particular case", the committee could not find any instances where fees have been paid for preparation by counsel. No allowance for it is made in the tariff.

The committee had filed with it a letter from the Saskatoon legal aid committee to the Attorney General in October of 1971. It sets out the past history of inaction on the part of the Attorney General's Department on suggestions which had been made from time to time by the Saskatoon committee. Portions of that letter merit quoting.

> "(1) It became obvious almost two years ago that we would have to find a permanent interviewer. After repeated requests to your office, we were fortunate enough to have Inspector Nordstrom assigned to our Committee, and his performance has been extremely good and made our efforts much more efficient.
>
> (2) Almost from the beginning we have been trying to ascertain whether or not mileage will be paid to an assigned lawyer going to an out-of-town center. As far as I can ascertain, we have never received a reply on this matter from your office. The only thing left to us is to suggest that the assigned lawyer put a mileage request in with his claim. I know that mileage has been paid, but we have no means of assuring any lawyer that this will automatically happen.
>
> (3) We have sought help from your Department to have the R.C.M.P. cooperate more fully with our committee. The point in issue being, that we wish that they would try to get a person seen by our interviewer before whipping him or her off to Prince Albert or Regina. We have not had too much success in this area.
>
> (4) Further to the above point, we have requested help from your Department in having someone assigned (welfare or probation officer) in Prince Albert and Regina to interview on our behalf the accused person who has already been taken to those places before being interviewed.
>
> (5) We have written at least once to your office requesting advice concerning accused persons who are under the care of government agencies such as Indian Affairs and the Department of Welfare. Should our Committee appoint a solicitor, or should the Department concerned make the appointment? There is no record of any reply having been received by us.

(6) About eighteen months ago we sent a confidential letter to your Department indicating in it our belief that there was a fair indication that perjury was becoming common amongst a group of accused persons concerned with narcotics. To put the point simply, we were having sworn affidavits indicating little or no means, and at the same time when bail was granted the same person pulling out a wad of notes of which he peeled off over one hundred. After a lengthy period of silence, (the local agent of the Attorney General) discussed the matter with us and indicated that he was doubtful whether a case could be made. We appreciated this conversation with him, but we did feel that your Department could have answered our request much earlier. We have done all in our power to prevent the abuse of the scheme, and we felt somewhat frustrated by the silence.

(7) Milgaard - When we were asked to rule upon the eligibility of this accused to make an appeal to the Supreme Court of Canada, we called upon your Department for a ruling as to whether the scheme provided for such an appeal. After some space of time we got such a ruling, and also a short lesson of how to determine the merits of such an application! We were further told by your predecessor that "In this particular case I am not prepared to authorize any additional fees by way of preparation or otherwise." This is somewhat tough advice when an appeal to the Supreme Court is involved.

I can document all, or most of, these statements from correspondence if you think it necessary. I do not think it is necessary because all we wish you to know is that we have had many frustrations in the past, but we are still more than ready and willing to make the scheme work. Perhaps I might just add one further comment. We are looking forward to your reply concerning the matter we referred to you a couple of weeks ago. You may recall that we feel that it is unwise and impractical to expect a juvenile to make a sworn affidavit concerning his parents assets. It could lead to a completely false picture. We feel that the parents themselves should be asked to make such an affidavit. The question of juveniles has been one of our most difficult problems in recent years because we are illequipped to determine the matter of 'rejection' by parents which is usually necessary to make a juvenile eligible."

This letter perhaps shows something of the general attitude towards legal aid taken by the government since the inception of the plan in 1967.

8. Appeals

By the rules of the Plan, the local legal aid committee is to decide if legal aid will be granted on an appeal. Counsel is expected to make a

written application to the local legal aid committee. The committee is to consider the case and the grounds of the appeal as set out in the application, and must determine that the appeal does not involve questions of fact only.

Again the rules have been bent in various ways by different local legal aid committees. In Weyburn and Melville, the Attorney General's Department is contacted to see if that department is willing to pay the costs of the appeal. In effect, in these areas the Attorney General's Department makes the decision as to whether or not legal aid will be granted. In Swift Current, the lawyer acting for the applicant will contact the committee chairman who usually gets in touch with one or two other lawyers in the area who do legal aid work, and a decision is made as to whether in the circumstances an appeal should be paid for under legal aid.

The committee heard complaints about the structure of the Plan relating to the granting of legal aid for appeals. Some felt that the local legal aid committee, in making its decision whether or not an appeal has merit, which the rules instruct must be done, itself acts as a court. Adding to this is the fact that in Saskatoon at least two members of the local legal aid committee with full voting rights are lay people. It was felt that the question of whether an appeal had merit was one of law and should require the people making the decision to be lawyers.

Interviewers and members of legal aid committees, who had in the past consulted the Attorney General's office with regard to allowing legal aid in appeal cases, felt that the main concern of the Department was how much money would be involved, and what the effect would be on the total cost of the Plan.

It was suggested to us that much more flexibility should be given in considering legal aid on appeals. More discretion should be left to the solicitor.

9. The Consumers

The committee attempted to reach a sample of persons who had been represented by lawyers under the legal aid plan in Saskatoon. Making meaningful individual contact with these people turned out to be very difficult. There was an understandable reluctance on the part of these people to talk about their experiences. Of those contacted, the main theme seemed to be that they felt that the criminal legal aid plan was working fairly well. A number of them complained that there was a lack of a real lawyer-client relationship in legal aid cases. Some felt that their lawyer had not put forth a lot of effort on their particular case, and that had they been paying the lawyer themselves they might have received better service.

The committee was able, however, to meet with two groups, each of which had members present who were ex-convicts and who had had some experience with the criminal legal aid plan. Operation Mustard Seed from Regina had this to say:

> "As far as criminal matters are concerned, the present Saskatchewan Criminal Legal Aid Plan is not adequate, for, under the present system, absolutely nothing is done for the accused person until the committee has received Sask. L.A.P. Form #1 and arranges an interview. The possibility that this form could be lost, short-circuited, or even destroyed is far too great. This holds especially true when the application is filled out by an incarcerated person on remand or confined to the city cells. A case in point: Prisoner (x) in Correctional Centre serving one year for auto theft. After two months of incarceration prisoner escapes lawful custody, steals a car and then steals a pair of trousers from Woolco. Arrested the same day. Prisoner now faces three more charges - (a) escaping custody, (b) auto theft, and (c) theft under - Prisoner applies for legal aid from Correctional Centre - For the next three weeks I appeared on behalf of the accused obtaining remands awaiting the appointment of the solicitor from legal aid. Following three remands, with still no solicitor appointed, on checking the evidence with both the R.C.M.P. and City Police, plus interviews at the Correctional Centre with the accused, by consent of prisoner (x) I informed both prosecutors that we would enter a plea of guilty to all charges. Prior to sentencing, I spoke on behalf of prisoner (x). Mr. J.G. McIntyre Q.C. of your committee was present in court that day and will

> substantiate any and all statements pertaining to this case. On investigation as to why legal aid was not supplied to prisoner (x) we find that a custodial officer at the Correctional Centre took it upon himself to decide that, as prisoner (x) was already serving a year, he did not require or should be granted legal aid on the three new charges and as such, short-circuited prisoner (x) application form L.A.P. #1. (Emphasis added)

> "In many cases, too many young less experienced lawyers are being assigned difficult cases, and where assigned to relatively minor cases, these same lawyers are not preparing for a proper defence. Case in point: Prisoner (y) now a Mustard Seed employee saw his appointed legal aid lawyer 15 minutes before his court appearance and was interviewed in the barristers' room and was there advised to plead guilty to a serious offence, namely, "Breaking and Entering with Intent" - no consultation, no preparation, no nothing.

> "Far too many persons appearing before the magistrates are totally ignorant, not only to the charge, but also their legal rights, and as such, are pleading guilty merely to get it over with."

Another group which the committee met with was the Freedom Society. This group of very articulate ex-convicts added to the comments made by the Mustard Seed Group. One member of the Freedom Society felt that many people who had criminal legal aid once would not apply again in Regina. When asked the reason for this, he stated simply that the service was so poor "that it was not worth the trouble to apply" for legal aid again.

The committee was very grateful for the time spent by these groups in making representations to the committee, and their frankness in discussing matters with its members.

10. Accounts and the Attorney General's Office

All accounts prepared by lawyers for services rendered under the legal aid plan are forwarded to the local legal aid committee's secretary in the locality where the lawyer practices. The local legal aid secretary forwards copies of the solicitor's account, and the legal aid forms, to the Attorney General's office for payment directly to the lawyer.

While the committee heard many unfavourable comments about the inadequacy of the Plan's fee schedule, it heard nearly as many complaints about the way accounts for fees were processed in the Attorney General's office. One practitioner wrote to the committee stating:

> "These letters relate to files which, with the exception of a. (named individual) involved an extraordinary amount of effort and quite frankly the attitudes which have been taken by the Department of the Attorney General to matters of this sort discourage and frustrate me.
>
> I feel that in the (named) matters I donated a great deal of my services as it was, yet find that the Department does not see fit to make payments of my accounts as rendered. I simply cannot believe the attitude of the Attorney General's Department in these matters, and while it would not likely be such a great loss to the 'system', I really must consider ceasing to do any further legal aid whatsoever."

Many more practitioners, in their replies to a questionnaire forwarded to them, complained of indiscriminant slashing of accounts rendered and innumerable delays in payment. Many suggested that any new legal aid plan should be administered independently of any government department.

11. Cost of the Plan since 1967

One thing may be said for the Plan. It has been relatively inexpensive in total and on a cost per case basis. The following table is taken from information forwarded to the committee by the administrative officer of the Department of the Attorney General.

Year	Expenditure	Number of Cases	Cost per Case (Approx.)
1971	$198,148.53	2,350	$84.00
1970	$170,806.37	1,893	$90.00
1969	$ 97,836.76	1,124	$87.00
1968	$ 97,264.22	no record	---
1967	$ 22,750.72	no record	---

The above figures represent only actual monies paid to lawyers as fees. Other expenses incidental to the operation of the plan are not readily available.

Appendix XII shows the amount paid by the Department of the Attorney General, under the criminal legal aid plan, for the year 1971-72, and the number of cases with respect to which the money was paid. The figures are only estimates in that the appendix shows the place where the lawyer to whom each payment was made carries on his practice. There is no way of determining whether the work, in any particular case, was actually done in that particular centre or elsewhere in the province.

The appendix shows the limited legal aid activity in rural areas. This is only partly explained by the fact that few lawyers practice in small rural centres. It was suggested to the committee by some local legal aid committee, and by some members of the judiciary, that the legal aid plan is not reaching out into rural areas. This may be the other reason why there is less legal aid activity outside urban centres.

Appendix XII shows a total of $197,358.43 paid out for criminal legal aid. As a matter of interest, $577,676.26 was paid to private practitioners and salaried staff lawyers for prosecutions during the same year.

12. Statistics

The committee staff attempted to collect statistics with a view to computerizing them to give some basis for a meaningful evaluation of the operation of the criminal legal aid plan. An attempt was really all that materialized. The initial plan was to secure statistics from the master files in the Attorney General's office in Regina. The committee found, however, that the legal aid files are lumped together with countless thousands of other files kept by the Department on individuals who have had criminal charges against

them. Legal aid files, that is, are not separately maintained or designated. No feasible retrievable method could be designed to obtain the legal aid application forms which the committee's staff required.

Since it was impossible to review the operation of the plan over the entire province, the research staff then tried collecting documentation from local legal aid committees at Saskatoon, Prince Albert, Yorkton and North Battleford.

At Prince Albert, all copies of the relevant forms were, as a matter of practice, forwarded to the Attorney General's office. Thus, the necessary information had disappeared into the Department's master files, and for research purposes was gone.

North Battleford, Yorkton and Saskatoon gave somewhat more favourable results. Each legal aid file, in those areas, for the year 1971 was examined. However, it was found that many of the forms had been improperly completed and that a number of files did not contain all the relevant forms. Thus, the statistics gathered cannot stand close analysis. However, some of the results do show trends which are probably accurate. They are as follows:

(1) Criminal record - Over half of the legal aid recipients in Saskatoon and over two-thirds in North Battleford had a previous criminal record.

(2) Experience of counsel - In Saskatoon, the figures show that persons engaging private counsel to act for them obtained lawyers with more years of experience than persons provided with counsel under the legal aid plan. However, the difference was not major. It is worthy of note that over 20% of the legal aid cases in Saskatoon during the year surveyed were handled by counsel with more than ten years of experience. It is to be noted that fewer complaints were heard in Saskatoon about inexperienced counsel than in Regina.

(3) Total criminal offences - Figures received from the Attorney General's Department show a total of 20,000 criminal code charges and about

3,000 other federal offences in Saskatchewan in 1971. These figures also showed a total of about 2,350 legal aid cases in the same year. Therefore, in over 20,000 cases persons charged were either unrepresented or engaged their own lawyer.

Rough calculations by the committee's staff indicated that about 40% of persons charged with criminal code offences in Saskatoon were represented by lawyers. It is probable that the percentage would be smaller in rural areas.

(4) Age of legal aid recipients - 58% to 70% of all recipients of legal aid in the three areas surveyed were between the ages of 16 and 26 years of age.

(5) Choice of counsel - The figures obtained are not completely accurate because of incomplete information, but the trend seemed to be that in about 50% of the cases in the areas surveyed accused persons did suggest a name of a lawyer whom they would like to retain. In Yorkton, 90% requested one specified lawyer or another. However, in that district the majority of legal aid cases come from the Kamsack district where there was only one lawyer. In almost all of the cases emanating from that area, this lawyer was requested.

SECTION 2 - LEGAL AID PROVIDED BY DEPARTMENT OF SOCIAL SERVICES

Since 1960 this Department has administered a limited legal aid scheme. Assistance is provided for three types of actions: those under the Deserted Wives' and Children's Maintenance Act, child welfare proceedings and affiliation actions.

A lawyer acting for a woman who has commenced proceedings with respect to any of the above matters, and whose client is unable to pay for his services, will be entitled to be paid a fee not exceeding $70 plus

reasonable disbursements from the Department of Social Services.

The committee was advised by the Department that, in the 1972 budget year, it estimates a total expense throughout the province for this program of $29,000.

In addition to the above, in child welfare proceedings where action is being taken to have a child removed from the home because of neglect, the Department will pay legal fees for the parents if they are unable financially to retain a lawyer. With respect to this class of case, the Department pays "reasonable fees". This particular program has been in effect since 1963.

Chapter IV

A REVIEW OF THE SASKATOON LEGAL ASSISTANCE CLINIC, THE PARKDALE COMMUNITY CLINIC, THE DALHOUSIE LEGAL AID CLINIC, CERTAIN CLINICS IN THE STATE OF MINNESOTA AND THE VALLEY LEGAL ASSISTANCE CLINIC

I. THE SASKATOON LEGAL ASSISTANCE CLINIC

(A) History

The origin of this Clinic is to be found in a resolution passed by the members of the Saskatoon Bar Association in April, 1969. It supported a proposal to extend voluntary legal services to poor people in the city of Saskatoon. Coincidentally, certain members of the faculty of the College of Law of the University of Saskatchewan had also been thinking of a similar development. In the result, from November 1969 to May 31, 1971, a legal assistance program was carried out on a voluntary basis by members of the Saskatoon Bar, faculty from the College of Law, and undergraduate law students. Offices were secured, rent free, in the Friendship Inn and then the Family Service Bureau. These offices were open on a regular, part-time basis each week. They were staffed by students. Each student was assigned to the supervision of either a member of the faculty of the College of Law or of a private practitioner. Accordingly, the student had immediate advice and assistance available to him whenever he felt that he was in a situation which might go beyond his competence. From the outset the support of private practitioners in the city of Saskatoon was outstanding. Not only have they freely given their time, without charge, as supervisors; they have also represented poor persons in litigation arising from the business of the clinic, without fee.

In late 1971, and early 1972, the federal Department of Justice carried out a survey of all student run clinics then operating across Canada. The Department assessed the work done by each of these undertakings. In the

result the Saskatoon Clinic was found to be one of the four best in Canada. Relying on this assessment, the federal Department of National Health and Welfare, in June 1971, decided to grant monies to three of those clinics, in order to allow each to operate as a demonstration project for one year. The clinics were the Dalhousie Legal Aid Clinic, the Parkdale Community Clinic and the Saskatoon Legal Assistance Clinic.

Armed with this funding, the Saskatoon Legal Assistance Clinic, in June 1971, employed a barrister (Mr. Linton Smith) as full-time staff director. In addition, premises for the Clinic were rented in a low income area of Saskatoon. Secretarial staff was employed.

In May 1972, the director of the Clinic took an articling law student on staff. In addition, four law students were employed on a full-time basis during the summer of 1972.

In 1972, the federal Department of Justice authorized a grant of $22,000 to the Clinic to permit it to employ another lawyer, on a full-time basis, to work with native communities in Saskatoon. That lawyer (Mr. William Wardell) will commence his employment in February 1973.

(B) Services Provided by the Clinic

(1) To the Individual

The Clinic stands ready to handle any matter for a poor person with the following exceptions:

(a) Criminal matters - This is by reason of the existence of the Saskatchewan Criminal Legal Aid Plan.

(b) Actions by a deserted wife under the Deserted Wives' and Children's Maintenance Act - This is by reason of the existence of the scheme operated by the Department of Social Services, under which

a lawyer in private practice may be retained and will be paid a modest fee for his services.

(c) Any case in which the client should be able to retain a private practitioner to act for him on a contingency fee basis.

The Clinic uses a flexible eligibility test. The only criteria is whether, in the opinion of the Clinic, the client would suffer undue hardship if he were required to retain a lawyer in the ordinary way.

The operations of the Clinic are geographically limited to the city of Saskatoon.

The caseload of the Clinic has grown dramatically. This is shown in Appendix XIII. That appendix also shows the kinds of problems which the clinic is called upon to deal with. It reflects, that is, the needs of poor persons for legal services, and the kinds of problems most commonly faced by them.

In considering the figures given in Appendix XIII, it is to be kept in mind that the Clinic only opens a file when some definite action is to be taken by it on behalf of a client. Accordingly, a file is not opened where mere summary advice is given.

(2) To Groups and Organizations

The Clinic also acts for citizens' groups and societies whose membership is composed mainly of poor people. The Clinic has provided a wide range of assistance to them. It includes giving advice on traditional legal problems and supplying speakers and discussion leaders for group educational programs. Some of these groups are as follows:

The Unemployed Citizens' Welfare Improvement Council. This is a self-help group. It was formed as a result of the Clinic acting on a large number of individual cases involving problems with unemployment insurance. In light of this experience, the Clinic suggested to a number of these clients that they consider forming an organization. This was done and the group soon began to operate on its own without further assistance from the Clinic. The organization maintains close contact with the Clinic and uses its assistance when it has problems which require the services of a lawyer.

The Single Parents' Group.

The We're Here Group. This is an organization of wives of inmates or ex-inmates of penal institutions. It assists the families of convicts.

The Injured Workers' Association. This organization assists persons disabled through occupational accidents in obtaining workmen's compensation.

The Clinic has contact with other groups either through referrals of clients to the Clinic, or as the result of requests to the Clinic for speakers and resource people.

The Clinic also has a close working connection with the Friendship Inn and the Family Service Bureau. The former is a "skid row" undertaking. It provides meals, clothing and general counselling and assistance to indigents. Many clients are referred directly to the Clinic by the Friendship Inn. The Family Service Bureau is a family counselling organization supported by United

Appeal funds. Clients of the Family Service Bureau with legal problems are referred to the Clinic. Clinic clients who require marriage or family counselling or assistance may be referred to the Bureau.

(3) In Education and Law Reform

The Clinic sees one of its main functions to be the supplying of information and education about the law to the community it serves.

It has carried on an extensive educational program through the media. In cooperation with the Saskatoon Bar Association and C.K.O.M. radio station in Saskatoon it has conducted a series of twenty one-hour weekly radio programs. These were of the "call-in" type and were concerned with basic information about the law and legal rights.

A similar series has been commenced for C.F.Q.C. TV in Saskatoon. These phone-in shows are one-half hour in duration, and will run a total of thirty-nine consecutive weeks.

The Clinic also produces pamphlets dealing with such topics as welfare rights, sales and debt law, police powers and citizens rights. These are distributed by various agencies in Saskatoon.

In the fall of 1971, the Clinic carried on a series of citizens' workshops dealing with matrimonial law, creditor-debtor law, police powers and citizens rights, and landlord and tenant law. Another set of workshops is planned for February of 1973.

In February and March of 1972, the Clinic, in conjuction with the Canadian Bar Association, the One Parent Group, the College of Law and the Extension Division of the University of Saskatchewan, sponsored a conference on "The Family and The Law". The conference occupied two weekends. During the first, panels were organized on specific topics for the purpose of disseminating information to the conference participants. At the end of it, those

attending the conference elected six persons to a "citizens' commission", chaired by Her Honour Judge Mary Carter of Saskatoon. During the second weekend, the commission received briefs from individuals and groups suggesting reform in various aspects of family law. The commission is presently considering the briefs and is expected to produce a report, together with recommendations, in the near future.

The Clinic is also called upon to provide speakers for programs at local high schools and the university.

Staff members of the Clinic feel that they have not been able to devote enough energy to the educational function of the Clinic. The day-to-day "crisis intervention" type of caseload occupies too much of their time.

In the area of law reform the Clinic has stirred up discussion and action which may lead to legislation which will improve the position of poor persons. Thus, in the area of landlord and tenant law the Clinic has made representations to the Department of the Attorney General asking for certain amendments to the Landlord and Tenant Act. It has also urged legislation to prohibit the use of wage assignments. It has pressed for legislation prohibiting employers from firing employees because of garnishment of wages.

The Clinic also played a somewhat significant part in getting the federal government to take steps opening up bankruptcy proceedings to poor persons.

(C) Structure and Operation of the Clinic

(1) Staff

In the first section of this chapter an outline of the clinic staff was given. This section expands on it.

The executive director of the Clinic, and the articling law student working under him, handle a significant part of the client caseload. In addition

a large part of their time is taken up supervising and assisting students from the College of Law at the University of Saskatchewan who, in their third and second years of study, volunteer to work in the Clinic. The executive director, and the articling student, also spend a considerable amount of their time arranging educational and group activities of the type referred to in an earlier part of this chapter.

A good deal of the work for clients of the Clinic is handled by students from the College of Law. Included in that group are, at the moment, eleven third year students who are registered in a clinical law class at the College. Their work at the Clinic, accordingly, forms part of their formal law school training. These students are, in particular, supervised by the faculty member in charge of that course. These students, in addition, act as directors for groups of volunteer students working in the Clinic.

Private practitioners, being members of the Saskatoon Bar, have always contributed generously to the work of the Clinic. They provide, on request, free consultation services and also undertake certain litigation, without fee, for the Clinic.

Faculty members in the College of Law contribute a good deal of their time in advising students on files and, on occasion, in manning the Clinic.

The executive director of the Clinic estimates that, for the twelve month period ending June 30, 1972, the total contribution to the Clinic made by practitioners and law faculty members, on a voluntary basis, would amount to approximately $34,000.00 on a fee-for-service basis.

In November, 1972, a small grant from the University of Saskatchewan enabled the Clinic to hire an unemployed school teacher as a community worker for one month. His task was to foster community participation in the operation of the Clinic.

(2) Community Participation in the Administration of the Clinic

The Saskatoon Legal Assistance Clinic Society is incorporated under The Societies Act of Saskatchewan. At its first meeting a citizens' advisory board was elected. It was made up of representatives from the Unemployed Citizens' Welfare Improvement Council, the Single Parents Group, the Friendship Inn, the Indian Cultural College, the Saskatoon Indian-Metis Friendship Centre and from the unorganized poor in Saskatoon. Provision was made for the board to add a maximum of three persons representative of other organizations interested in the work of the Clinic and three law students registered in the clinical law class mentioned above.

Following on the incorporation of the Society, its board of directors was made up of three private practitioners, one of whom is currently the President of the Saskatoon Bar Association, the Dean of the College of Law and three professors from the faculty of that college. In December of 1972, the Society decided to merge the board of directors with the citizens' advisory board. Accordingly, the single board of directors which the clinic now has consists of both lay people and lawyers.

(D) Philosophy

Part of the approach of the Clinic is that its offices should be located in a place accessible to its clients - that it should, that is, be physically accessible to those whom it serves.

The Clinic also attempts to make itself psychologically accessible. This position was expressed in the following extract from the brief submitted to the committee by the Saskatoon Legal Assistance Clinic Society:

> "Poor people are different than rich people in more ways than merely financial ones. Years of accumulated negative experience with the law and its institutions have built up deep feelings of distrust and resentment in the poor community, which is difficult for the middle class person to comprehend.

> To the poor person, the lawyer has always been the one acting for the landlord, the finance company or the state - few poor people know any lawyers, let alone can afford to hire one."

In the same vein the brief goes on to suggest that poor people

> "... feel intimidated and out of their element in the plush and well-furnished office of a middle class lawyer, where the secretaries and lawyers are fashionably dressed and meticulously groomed. Poor people have spent a lifetime feeling inadequate because they couldn't afford the clothing or household goods advertised in magazines - they do not need a further blow to their self-esteem by feeling out of place in their not-quite-so-new clothing, and by being reminded of the shabbiness of their own lives."

As the brief puts it, clinic lawyers feel that they can and must

> "... choose to spend time with a client discussing problems which are not directly legal in nature, but which in the long run have a bearing on future legal problems of a client. For example, a person who requires the services of a lawyer to appeal a decision of the welfare department or unemployment insurance commission may also require encouragement and interest in his plans for up-grading courses in order to obviate the future necessity for social assistance. Such a client may become lost in the morass of an unemployment office, but may find motivation to carry through his goals by getting encouragement from his lawyer. A private lawyer cannot generally afford to spend time discussing these non-legal matters; a community clinic lawyer who is under less pressure to 'process' clients may make a decision to spend time in such a discussion if he feels this is a valuable way to deal with the situation. A community lawyer, by the nature of his work, is in a position to see the importance of developing the personal relationships with his clients which is not possible to do in a hectic down-town office."

The Clinic also sees itself as a vehicle to assist poor people in changing some of the ground rules of a society which has done little to destroy the cycle of poverty. By providing poor people and their organizations with legal skills, those individuals and groups may become more effective in their struggle for social change. This is one of the ways which, in the opinion of the Clinic, may serve to lessen the sense of alienation which poor persons feel from the legal system, and the social system of which it forms part.

The Clinic sees itself as belonging, to a significant extent, to the

community which it serves. It hopes that through community participation in the administration of the Clinic poor people will come to learn organizational skills and, more importantly, will assist the Clinic in working for them in areas which should have priority.

The Clinic feels that it is developing an area of specialization in law. Many of the problems which poor persons face are significantly different from those encountered by middle class persons. Traditional areas of legal specialization, accordingly, which are designed to assist a middle class clientele are often beside the mark as far as poor persons are concerned.

II. THE PARKDALE COMMUNITY CLINIC

The chairman of the committee and one of its members, together with the committee's secretary, visited the offices of this clinic in Toronto.

This Clinic has been operating for approximately the same time as the Saskatoon Legal Assistance Clinic. In a general way, its structure, operation and philosophy are much the same. The Clinic was formed as the result of efforts by a number of the members of the faculty of the Osgoode Hall Law School.

Professor F.H. Zemans, of the above faculty, directs the work of the Clinic, and spends most of his time at it. He is a barrister of several years experience. In addition, the Clinic employs another barrister, on a full-time basis. He, again, has had some five years experience at the Ontario Bar.

The Clinic also employs two lay people. One of them is a welfare worker who assists with the social problems encountered by clinic clients.

As already noted, the province of Ontario has a comprehensive legal aid plan, operating on a fee-for-service basis. The object of the Clinic is

to demonstrate an alternative method of delivering legal services to poor persons. Its function also is to attempt to find out what the unmet need in the particular area of Toronto which it serves may really be. That area is low income, and is largely made up of householders in rented premises of one sort or another.

The Clinic clientele consists, in main part, of persons who are unable to get legal aid under the Ontario plan. This reflects, in significant part, the inability of that plan to serve the "uneconomic case" which, however, so often looms large to the poor person.

As well as servicing individual clients, this Clinic acts for a number of poor persons' organizations - notably tenants' groups. Three of these organizations have their own offices in the same building which the Clinic occupies.

III. THE DALHOUSIE LEGAL AID CLINIC

This Clinic, again, follows the same organizational structure and adopts the same approaches as those outlined with respect to the Saskatoon Legal Assistance Clinic. Its director is a member of the faculty of law of Dalhousie University. Apart from him the full-time staff consists of a young barrister, two para-professional people and secretarial assistance. The members of the committee who visited this Clinic where interested to find that, in addition, a retired judge of the Nova Scotia Supreme Court spends regular afternoons, on a volunteer basis, at the Clinic, assisting in its operations - notably consultation. The Clinic's director told committee members that its main work is in the area of housing. Redevelopment plans in Halifax have caused a good deal of upheaval in poor residential areas. This has led to a demand for legal assistance by various groups of poor people in connection with their

difficulties with local authorities.

The Clinic has a fairly active preventive law program. This has involved the preparation of pamphlets having to do with various aspects of the law, and the use of local T.V. The Clinic has also carried out educational work with various drug abuse centres and ex-convict groups.

One of the para-professional workers employed by the Clinic is used exclusively in the family law field.

IV. MINNESOTA CLINICS

The committee chairman, together with another committee member and its secretary, spent several days in Minneapolis. Primarily, the purpose of the visit was to see something of the operation of the public defender system in that state. That matter is reported on elsewhere. While in Minneapolis, however, the committee members took advantage of the opportunity to meet with certain attorneys working in clinics in that city.

Committee members spent a considerable time with Mr. Paul Maurino. He is the director of the clinic operated by the Legal Aid Society of Minneapolis. It is a non-profit operation similar to the Saskatoon Legal Assistance Clinic Society. Historically, this society dates back to the 1930s. After 1964, however, funds became available from the American Office of Economic Opportunity, as part of the federal "war on poverty".

Mr. Maurino's clinic is located in down-town Minneapolis, in a depressed area. The clinic has a staff of 19 lawyers, including the director. It operates as a law firm. Thus, the names of the three senior attorneys on the staff are used as the firm name on all pleadings and court documents. Most members of the staff have from two to six years experience at the Bar. A real, and apparently successful, effort is made to develop expertise within the staff. Thus, one

staff attorney specializes in federal court practice.

The clinic has a board of directors consisting of 25 people. One-third of them are poor persons. They are representative of local groups. The board is responsible for the policy of the clinic. It hires the director. He, in turn, deals with all personnel matters from that point on.

Mr. Maurino told the committee members that the clinic was highly respected in Minneapolis for its legal competence and ability. This was confirmed in conversations which committee members had with practitioners outside of the clinic itself. Mr. Maurino's approach to the work of the clinic was interesting. He said that there was no place in it for "crusaders". Rather, he looked for "aggressiveness coupled with competence". Maturity, he said, of the attorneys is a very important factor. He said that the clinic, where it was necessary in the interests of a client, or organization, to do so, did not hesitate to "antagonize people". He said they sought to do it, however, "in a constructive and competent way".

The committee members also met with the director of a similar clinic operating in the city of St. Paul. He is a Mr. John Braugh. To some extent, the approach of Mr. Braugh's clinic was different from that of Mr. Maurino's. For one thing, the St. Paul clinic uses a number of para-professional workers - which the Minneapolis clinic does not. These workers are used, to a significant extent, in educating poor people so that they may be able to deal with their own problems with welfare departments and other government agencies. One of the para-professionals is an American Indian. Some of the others are black people. The American Indian para-professional acts as an advocate for that community in his city. At the time the committee members were visiting in Minnesota, this gentleman was significantly involved in pressing the school administration in St. Paul to review all school texts which may contain reference to citizens of

native ancestry.

Committee members also met with a Professor Goldberg, of the Law School of the University of Minnesota. He is heading up a scheme providing legal assistance for inmates of penal institutions in the state. His undertaking is federally funded.

There are surprisingly few inmates of state prisons in Minnesota. Thus there are approximately 750 men at Stillwater, 75 women in a prison outside Minneapolis, 500 inmates at a reformatory at St. McLeod and a number of inmates in work-camps in Minnesota.

Professor Goldberg is an attorney. In providing services to convicts he relies significantly on law students at his school. They are basically concerned with the provision of legal aid in civil matters. This very much includes the family law area. On occasion, however, his organization is able to assist in dealing with problems arising within the institution itself - such as disciplinary matters. Law students also carry out a fairly extensive educational program in the prisons.

V. THE VALLEY LEGAL ASSISTANCE CLINIC

The Valley Clinic is an experiment in the delivery of legal services to rural residents using the clinic method. Operating on a Donner Foundation grant, the director, a barrister, serves the farming communities of Rosthern, Wakaw and Duck Lake, Saskatchewan. In addition, there are two Indian Reserves in the clinic's area.

The director maintains offices on staggered days of the week in the communities served. He also acts as "duty counsel" when the magistrate sits in the two largest centres in the district - Rosthern and Wakaw. He takes criminal trials only when a client specifically requests that he act for him. He has

found that, although clients who are eligible may choose from a number of lawyers from surrounding larger centres by virtue of the existence of the criminal legal aid plan, a very large majority asks him to act. The other services provided by the Clinic range from those of a strictly legal nature to matters with little "law content". It soon became apparent to the director that there is a real lack of services of many kinds in the rural communities which he serves. As an example, he told the committee that there are no unemployment insurance offices in the clinic area. As a result, people who are not able to travel to the larger cities, or who are unable to cope with such problems through the mail, come to him with their problems.

The director advised the committee that counselling services in such matters as family disputes and financial problems were almost non-existent in rural areas. A significant amount of his time is taken up with such matters.

(A) Eligibility

The Valley Legal Assistance Clinic's eligibility criteria are, of necessity, very flexible. The director endorsed the conclusion reached by the Conference of Governing Bodies of the Law Societies of Canada. The effect of it is that legal aid should be granted if the hiring of a lawyer in the regular way would cause "serious hardship" to the client or his dependents. Determining eligibility was cited as a difficult problem by the director for a number of reasons. For one thing, he explained that many people in his area live as far as thirty to forty miles from a private practitioner, and for various reasons are not prepared to travel that distance to see a lawyer. Accordingly, he is often approached by persons who are not strictly eligible, but who are unwilling to travel to a major centre to see a lawyer.

Another problem in determining eligibility in rural areas lies in the fact that many farmers have what appear to be fairly substantial capital

assets. However, a farmer with $30,000 worth of capital may have a net income of only $2,000 or $3,000. The Clinic's brief suggested that only net disposable income should be considered when determining eligibility. The brief further suggested that no hard and fast rules can be drawn and that the final decision in individual cases should be left to the discretion of the clinic staff.

(B) Activity and Philosophy of the Clinic

The director said in his brief that "to a large extent lawyers practicing poverty law are in fact practicing in a specialized area which does require some specialized knowledge." He explained that in his work he found it necessary to study the Saskatchewan Assistance Plan and its regulations; the Unemployment Insurance Act and its regulations; the Veterans' Pension Act and its regulations, and various other legislative provisions which a lawyer in private practice is not often called upon to handle. In this sense he felt that the rural clinic experience was very similar to that of the Saskatoon Legal Assistance Clinic in that there soon appeared definite areas of law which poor persons require services in.

The director felt that one of the most important features of the clinic model in rural areas was the close bond which developed with clients.

> "I feel that a strong bond has been developed between our clinic and our various clients. I have found in my brief experience that the same bond does not develop between a solicitor and client in private practice. I feel that, as a lawyer practicing in a community clinic, I am able to pursue matters which very often in private practice, due to the cost and time involved, would be impractical to consider."

The director explained to the committee, when he appeared before it, that rural people in general and rural poor in particular are hesitant to seek the services of a lawyer even when they recognize a legal problem. He felt that he had to make a real effort in the initial stages in dealing with clients

and the community in general to establish credibility as a person. He found however that once relationships were established a very close bond resulted.

On the subject of community involvement in the direction of the clinic, the director said that he felt that this was a very worthwhile objective, but difficult to achieve. He stated that he had had excellent cooperation from municipal governments and various organizations in the districts he serves, but that to date their only interest was that he maintain an office and provide a service to the residents of the community. He did not yet see signs of the community wanting to become directly involved with the administration of the Clinic.

The director pointed out in his brief that he felt that the clinics must remain autonomous from government bodies. He said that much of his work involved acting for clients against government agencies and that any hint of government control in his day-to-day operations would be very harmful.

Chapter V

A SUMMARY OF BRIEFS PRESENTED TO THE COMMITTEE

The committee received a total of 54 written submissions. A list of the organizations making them is contained in the appendix to this report. In attempting to summarize them, the committee, of necessity, will fail to do full justice to all of the interesting, and useful, material contained in them. It would be impossible to accomplish this without quoting all of them in full and this, of course, will be impossible. In this connection, however, the committee records the fact that all of the submissions will be filed with the Attorney General for his reference, and those of his colleagues concerned with this report.

In this chapter the committee will make particular reference to certain briefs only. In doing so, it does not wish to leave the impression, however, that failure to mention other briefs in any way implies that the committee did not find the contents of them very useful indeed. Quite the contrary. Each and every brief has played at least some part in the thinking of committee members, and in discussions which the committee has held. In the introduction to this report the committee had occasion to thank all of those many people who took the time and trouble to consider the area of the committee's enquiry and to place their suggestions before us. The committee again, in this chapter, wishes to underscore its thanks.

THE BRIEFS IN GENERAL

It is interesting to note that, in those briefs which dealt squarely with the question of which kind of delivery system might be best designed to provide legal services to poor persons, twenty urged the "clinic system", three

suggested the use of the "public defender" and two supported a system of providing legal services to the poor by private practitioners on a fee-for-service basis.

The briefs which supported the use of neighbourhood legal clinics, as well as certain other briefs which did not directly deal with delivery systems as such, strongly urged the following points:

(1) The need to remove a legal aid scheme from any kind of direct government control.

(2) That there should be involvement on the part of local communities in the ongoing operation of a legal aid scheme.

(3) That part of the functioning of a legal aid scheme should be educational programs and preventive law activities.

(4) That para-legal people, of one sort or another, should form part of a legal aid scheme.

(5) The psychological problems faced by at least certain poor persons in securing legal services through an "ordinary" law office. On occasion, this theme was varied by stressing the need on the part of the legal profession to develop a new awareness of the problems of poor people.

THE LAW SOCIETY OF SASKATCHEWAN BRIEF

In its general comments, this brief stressed that legal services under any plan must not be of an inferior quality. The same skills, that is, must be made available to those obtaining assistance as are made available to others. The Society urged that any plan should attempt to remove any stigma of charity.

In dealing with the matter of civil legal aid in the province, the Society underscored (and rightly so) the significant contribution made by private

practitioners over the years in providing their services without charge to many poor persons. It made the point, however, that with the increasing complexity of society, and increasing demands for legal services, discharging this professional responsibility has become more and more onerous. The Society, in this connection, stressed one particular reason why lawyers in Saskatchewan have difficulty in meeting the need on a voluntary basis. The ratio of lawyers per capita is significantly lower than in other parts of Canada. The national average is one lawyer for every 1,306 people. In British Columbia it is one to 1,067; in Alberta it is one to 1,359; in Manitoba it is one to 1,378; and in Ontario the ratio is one to 1,118. In this province, however, the ratio is one to 1,879.

In dealing with the matter of financial eligibility, the Society said:

> "Financial eligibility should not depend upon the applicant having an income below a predetermined level. Rather, it should depend upon whether the applicant can pay for the professional services which he requires without causing serious hardship to himself or his dependents. An applicant who can pay some part but not the whole of the cost of the legal services which he requires should be entitled to legal aid upon paying or agreeing to pay that part of the cost that he is able to bear."

In this area the brief goes on to suggest that a legal aid plan should give general criteria only with respect to eligibility, and avoid precise rules reflecting earned income, disposable capital, etc. On the other hand, the brief urges that there should be safeguards against abuses of the plan. These should include provisions excluding "frivolous cases".

The Society, in its submission, then surveys the different approaches taken in other jurisdictions towards the provision of legal aid. The brief supports the "free choice" approach for the following reasons:

(1) One of the objectives of any legal aid plan should be to eliminate the concept that there are two kinds of law - one for the

rich and another for the poor. Free choice of counsel, the Society suggests, achieves this goal better than other methods.

(2) Under this approach, the legally aided client is not "ghettoized".

(3) Under any "salaried system" a lawyer will not have sufficient time to spend with each client.

(4) The free choice approach is not really more expensive than a salaried system. In any event, the Society urges, the prime factor should not be the "price tag".

(5) Under a salaried system there is no guarantee that the lawyer will be independent.

(6) The salaried system may raise staffing problems. The Society suggests that lawyers working in it may tend to be young and inexperienced and leave after gaining two or three years experience. Further, it is suggested that more experienced lawyers would not likely be on staff to guide younger lawyers, or to handle more complex litigation.

With respect to legal aid in criminal matters, the Society laid the following recommendations before the committee:

(1) Legal advice should be available to an accused "before his first appearance in court".

(2) Every person charged with an indictable offence should have counsel, and it should be provided at an early stage in order to ensure that the defence is effectively presented.

(3) That legal aid should be available in summary conviction matters where there is "a substantial likelihood of imprisonment or loss of means of livelihood".

(4) Legal aid should be available in a case of preventive detention.

(5) With respect to appeals of convictions, legal aid should be available in every case involving imprisonment or loss of means of livelihood.

(6) Legal aid should be available in extradition proceedings and in proceedings by way of prerogative writs, arising out of criminal cases.

(7) That a legal aid scheme should include duty counsel, as under the Ontario plan.

In dealing with the problem of providing legal services to the rural poor, the Society suggests that "financial assistance be made available to residents of those areas to help defray the costs of travel" to an urban centre to consult a lawyer.

The Society's brief deals, in a general way, with the provision of legal aid in the remote northern portion of the province. It suggests a system of "travelling duty counsel" through the north. Recognizing the peculiar problems which exist in this portion of the province, the Society says that it is aware, however, that its recommendations in this connection may well "require modification".

NATIONAL FARMERS UNION BRIEF

This brief addresses itself, primarily, to the problems connected with the delivery of legal services to the rural poor.

One problem the brief points to is the heavy concentration of practicing lawyers in urban centres. Thus, 87% of Saskatchewan lawyers practice in cities with a population of 5,000 or more. 62% of all practitioners are to be found in Saskatoon and Regina. Only 33 towns and 6 villages have legal services.

The brief suggests that the problem in rural areas is worsened by the

fact that, where lawyers are in practice, they tend to be unfamiliar with those areas of law which would primarily affect poor people - such as welfare, expropriation, unemployment insurance and debtor difficulties.

The brief also asserts that there are psychological factors which make the rural resident loath to see a lawyer. These relate to the kind of physical surroundings in which the average practitioner may be found. The brief goes on to say that these factors "coupled with incomes far below the poverty line in many cases, make under-utilization or non-utilization of legal services the rule rather than the exception" with rural poor.

The brief urges that, in attempting to preserve the rural community, the availability of legal services is as important as medical, and related, services.

In turning to the question of delivery systems, the brief refers to a number of problems which, it suggests, would be involved if the "fee-for-service" approach were adopted. In part these relate to the geographic location of lawyers in the province. In a general way, however, the brief says that in providing legal aid to rural areas a "new and imaginative approach" must be adopted. It suggests that the traditional office would be the last place that a poor rural resident would go with a problem. The Union also says that, in its opinion, it is not likely that rural lawyers would be willing to tackle local and provincial government agencies, or local businesses since, in significant part, they may have to rely on them for their ordinary retainers.

The brief supports the community clinic approach. In part, the N.F.U. supports this by pointing to the tradition in Saskatchewan in the health care field.

The brief lays down the following recommendations with respect to the structure and operation of a clinic system:

(1) The plan should be administered by a central commission. It would have representatives of the Law Society on it, but should not be controlled by it.

(2) This commission should encourage the formation of Community Legal Service Associations as non-profit societies. The board of each such association would be drawn from representatives of the communities to be served.

(3) Each society would employ lawyers to provide legal services in a certain geographic area.

(4) There would be para-legal people attached to each clinic.

(5) The board of each local clinic would "govern the financial and policy aspects of the programs" undertaken by the clinic but would not interfere in the day-to-day practice of staff lawyers.

(6) Staff lawyers, as well as providing legal services, should be active in preventive and educational activities.

In dealing with eligibility, the N.F.U. suggests that this should be determined by disposable income, not total assets. Disposable income should be compared with "some defined standard, reflecting the average standard of living".

ROYAL CANADIAN MOUNTED POLICE "F" DIVISION BRIEF

This brief criticizes the existing Saskatchewan Criminal Legal Aid Plan. It puts forward the following particular complaints:

(1) There is difficulty in contacting legal aid officials - particularly in small southern communities and the remote northern areas.

(2) A legal aid applicant cannot obtain legal aid when he is first arrested or charged.

(3) The financial standard for eligibility are too low.

(4) The scheme is too limited in that it does not include provincial statutes and all federal statutes.

With respect to the matter of civil legal aid, the brief makes the point that, in many communities in Saskatchewan, R.C.M.P. officers "are really the only persons in authority for poor people to turn to for advice regarding their civil problems". While this is not a position which the force seeks to occupy, the brief points out that it has, of necessity, come to understand something of the needs of poor people for legal aid in the civil law areas. The brief lists the following:

(1) Poor persons are unaware of their rights with respect to small claims.

(2) Ownership of chattels and property between separated married couples.

(3) Landlord and tenant matters.

(4) Motor vehicle accidents.

(5) Boundary and trespassing disputes.

(6) Disputes with government agencies.

(7) Problems with lending institutions and collection agencies.

With respect, again, to criminal legal aid the brief supports the public defender approach.

The brief makes the interesting suggestion that, within a legal aid scheme, there should be a "central processing point" in the province where a person could telephone, free of charge, on any matter of a criminal or civil nature. The brief suggests the following kind of structure in this connection:

(1) Upon a person phoning in, personnel at the central point would establish verbally whether the caller was eligible.

(2) If so, the caller would then be advised where application forms could be obtained or if the matter was urgent, given the name of the appropriate lawyer to contact.

(3) If the matter was not significantly of a legal nature, but could be handled by some other government agency, the caller could then be referred on.

The brief also supports the use of "para-legal" personnel on the criminal side of a legal aid program. Such personnel, the brief suggests, could assist public defenders in preparing cases, locating witnesses and researching material.

The brief strongly urges, as noted above, that the present criminal legal aid plan should include all criminal code, federal and provincial statutes. It makes the point that while it may be said that provincial offences are minor in nature, "they are just as important to the man without means who feels he is not guilty as a serious criminal offence would be". In calling for a re-examination of the existing criminal legal aid system, the force says that it should be revamped so that "all poor persons in the province will receive a defence which is as full and vigorous as that afforded individuals who have means to pay private attorneys. We feel this to be a key area in winning over the poor to believe in the rule of law."

JOHN HOWARD SOCIETY BRIEF

This organization is particularly concerned with the need for provision of legal services to inmates of penal institutions. While by no means overlooking the necessity for legal aid outside of prison, the brief stresses the fact that a prisoner's "problems in the world outside do not miraculously disappear; many will be left behind; others will develop because of incarceration".

While, in general, suggesting a blend of the clinic and free choice systems, as far as delivery of legal services is concerned, the brief urges the use of clinics at Prince Albert and Regina in particular. It suggests that they might be the ideal vehicles for the extension of legal aid to inmates of institutions in those centres.

As to the northern portion of the province, the Society recommends the establishment of "fully staffed peripatetic legal service clinics, based on La Ronge". It sees such clinics providing a wide range of services at least until such time as there may be sufficient practicing lawyers to make involvement by the practicing bar a meaningful possibility in the north.

SASKATCHEWAN COUNCIL OF ANTI-POVERTY ORGANIZATIONS BRIEF

This organization recommends "that neighbourhood or community legal services be set up under the policy control of local mixed boards of directors, made up of community leaders, low income citizens of the community concerned, lawyers, clergy and educators". It recommends that these clinics should be located so as to be readily accessible to the poor. The brief sets out the following reasons in support of the clinic approach:

(1) A salaried lawyer working full-time in a clinic, devoting all of his time to the legal problems of the poor, would develop expertise not found in the ordinary practicing bar.

(2) Such a lawyer would be made aware of the kinds of problems which lead to family difficulties. Working in a clinic structure, there would be more chance of developing participation of other persons in addition to the lawyer in attempting to solve such problems.

(3) The clinic lawyer, the brief suggests, can carry out an educ-

ational function. "He can help to increase the public's knowledge and awareness of common every day legal problems, thus playing a kind of preventive role."

BRIEF FROM MR. GARTH CANTRILL (PROBATION OFFICER, BUFFALO NARROWS)

In his brief, Mr. Cantrill dealt with some of the problems which he has encountered in the northern part of the province involving native people and the administration of justice. The judge of the magistrates' court serving this large part of the province of necessity uses air services. When lawyers do appear for accused persons in the magistrates' court, they alternate from sitting to sitting. Of this Mr. Cantrill says "the change of lawyers and the uncertainty of their appearance has resulted in a lack of continuity and trust. A problem facing the lawyers when they arrive here is being aware of the low level of sophistication, in relation to the courts, of the people. This has resulted in further removing the courts from people's daily lives." He suggests "that the only effective solution to the lack of legal service here would be to hire a lawyer to work full-time in this area. The lawyer should live in one of the centres here in the north in order to provide legal assistance on a level more consistent with that provided in the south. He should provide civil as well as criminal assistance."

The brief goes on to recommend that such a lawyer could assist in training native court workers who, together with the lawyer, would develop educational programs to assist people in better understanding their rights and responsibilities under the laws of Canada.

SASKATCHEWAN ASSOCIATION OF SOCIAL WORKERS BRIEF

This organization criticized the existing Saskatchewan Criminal Legal

Aid Plan. It suggests that the eligibility criteria are too restrictive; that it deals unfairly with young offenders; that the means test is unfair in that it takes into account what resources should have been available to the client, rather than the resources now available; that the eligibility requirements do not take into consideration the size of the family to a sufficient extent; that there should be no limit on the number of times legal aid is available. The brief also suggests that some lawyers, working under the plan, do not spend sufficient time in servicing their cases.

In dealing with the area of civil law, the organization says that the areas of need which they have seen involve family law, debtor problems, tenant problems and multitudinous claims under various government programs such as unemployment insurance, Canada pension, Saskatchewan assistance plan.

METIS SOCIETY OF SASKATCHEWAN BRIEF

The Society urges that, on the criminal side, legal aid should extend to cover provincial offences. Of this class of offence the Society says "most of the convictions of the native in this area result from offences against various laws governing the distribution and consumption of alcohol. These have a serious effect on the native since they bring him in contact with the criminal population".

The Society criticizes the existing criminal legal aid plan on the footing that it has no preventive function. That is, the native has to find himself actually charged with some offence before he comes to the attention of the law, or the legal aid plan.

The brief also criticizes the existing plan with respect to its administration. It points to the fact, in this connection, that control is vested in the legal profession, without any opportunity for involvement by the general

public or those who use the services. With respect generally to administration of a legal aid plan, the Society says "no system of service delivery which is to provide services for a specific group or segment of the general public can actually meet the needs of those people in an effective and successful way unless there is provision for them to be involved. They are the ones who are experiencing the problems and are in the best position to know how services should be provided to them, under what conditions and circumstances, and what kind of services. This knowledge is hardly available to the middle class and upper-middle class legal professional, who knows little if anything about native culture and the circumstances in which the poor native persons lives."

The brief urges the extension of legal aid into the civil area. In dealing with the elements of a good, comprehensive legal aid system for native people the brief, in part, says that it should involve the use of indigenous workers, living in local communities. They would be available to provide information regarding legal services, as well as performing other functions. They would give pre-court counselling. Their task would be to determine the nature of the problem, advise the person of his rights, inform him of services available. They should have the right to speak in court on behalf of the native accused. This, the Society suggests, would help overcome the language barrier in the administration of justice.

In pointing to the civil law area, the brief sees a need for assistance with respect to family and child welfare laws, property laws, tax laws, debtor-creditor problems and landlord and tenant law.

The brief urges that a legal aid scheme should have a preventive aspect, through an educational function. They see a role for the indigenous worker in this area.

With respect to administrative structure, the Society urges that a

legal aid system should be organized on a recognizable community base - that is, it might involve a city or town and its surrounding market area, or some other geographic area related to mobility patterns of the people involved.

The brief recommends that the system should be operated and controlled by local people. It suggests that the users of the service should have the major representation on the necessary agencies and should be in a position to make their views and needs known and to be able to influence the ways in which services are organized and provided. It makes the point that, since trained legal people cannot be available in all of the isolated communities in the province, indigenous workers could be trained to function in a variety of roles including that of legal assistance.

In dealing specifically with the northern part of the province, the brief again underscores the role which indigenous workers, within a legal aid scheme, could play. The Society supports the clinic approach and, with respect to the north, suggests that clinics should be held on a regular, routine basis so that individuals will know when the lawyer will be available.

BRIEF of THE CHURCH IN SOCIETY SUB-COMMITTEE OF THE SASKATCHEWAN CONFERENCE OF THE UNITED CHURCH OF CANADA

This group urges a comprehensive legal aid scheme since without it, it suggests, there is a serious violation of human rights - the right to adequate legal services, which is presently being denied large numbers of people because of their financial limitations. Further, the organization says that a well conceived legal assistance program could relieve the incidence of poverty; assist people to become self-supporting and, in the long term, reduce the public cost of assistance programs.

The brief is critical of the existing Saskatchewan criminal legal aid program. For one thing, it says that the eligibility criteria are too rigid.

Further, it suggests that services under it are not readily available except in cities and larger towns.

The brief mounts a fundamental attack on the existing scheme in saying that, in being limited to criminal matters, it fails to cover a broad area of legal problems experienced by low income people. The organization, in dealing with that matter, points to the areas of family law, welfare rights, tenant rights, debtor problems and consumer problems as being particular areas of need.

The organization urges the establishment of a clinic system. Of it, the organization says "a well conceived legal services program would strike a major blow at the basic structure of poverty. In addition to providing prompt remedial action, identifying problems to be avoided, reducing the incidence of crisis events, it could, through consultation and information programs, develop a greater degree of self-reliance and independence among indigent people."

The brief suggests that clinics should be strategically located throughout the province so that small towns and rural areas have adequate services - this might include "circuit" coverage. In addition to professional staff, the organization says that clinics should include para-legal assistants. They see clinics providing counselling and consultative services to assist individuals and groups, as well as giving service to individual cases. Further, the organization sees clinics carrying out an information and educational program and having a law reform function. They see clinics providing legal services to non-profit organizations and maintaining close liaison with all assistance agencies. The brief urges that the system should operate with flexible and discretionary eligibility procedures and that these should make some provision for contribution by clients, where practical.

Of the educational function of a clinic, the brief says that through it "poor people would learn to identify their legal problems, understand the

law, eliminate some of the future need for legal services and participate in programs of self-help and independence which would hopefully affect their total life style."

The brief stresses that, under the clinic approach, "the persons most directly affected should participate in its formulation".

THE FEDERATION OF SASKATCHEWAN INDIANS BRIEF

This brief deals in general terms with the kinds of approaches which ought to be involved, in the view of this organization, in a legal assistance program. In part, the Federation says that it "would like to see a system of legal aid preferably controlled by an independent body or society. In this way direct representation of the Indian people could be accomplished and a meaningful participation by Indian people in the legal process established."

The Federation sees a legal aid program entailing, in part, a broad education program which would get over to Indian people a knowledge and understanding of the legal system. Further, the organization sees a proper legal aid scheme developing a relationship between Indian people, the judiciary, law enforcement agencies and the legal profession. It would enable the people concerned in the administration of justice to gain knowledge about Indian people in order to create a sensitivity and understanding in their work with native people.

The specific recommendations of the Federation include the following:

(1) A legal aid system should include the authority of the local band council "which has the ultimate responsibility for all services within a reserve."

(2) Before any scheme is set up (a) local band councils should be informed of the general plan and purposes, and (b) the band

council should be consulted in order to develop a program of education designed to interpret the law and legal aid services to the local people.

(3) They recommend that the province negotiate with the federal government to get it to accept and discharge its responsibility for legal services to Indian people by providing financial resources necessary to establish such services at the local reserve level.

(4) Legal aid services should be coordinated with efforts by band councils to establish an integrated system of community services.

(5) Basic legal services should be provided by indigenous workers who will be given special training and who will be selected and employed by the local band council.

(6) The administration of the system should be vested in an independent non-government body made up of representatives of Indian people as well as representatives of other groups or organizations, including the legal profession.

YORKTON FRIENDSHIP CENTRE BRIEF

This organization vigorously underscored the need for a comprehensive legal aid scheme. In part, the organization says:

> "What does the present legal system offer the poor? Can they seek legal advice from a qualified person on matters that greatly affect their lives? Is there anyone who will voluntarily inform them of the rights they possess as Canadian citizens? Do they have a legal representative who is really concerned about the problems which surround them? We all realize that if these questions are answered honestly they point to only one conclusion - our present legal system is a miserable failure in providing service to the poor.
>
> The poor hesitate to seek the services of lawyers and quite

> understandably so. They live their entire lives with the visible signs of poverty, ragged clothing and slum-like dwellings, labeling them as second rate. These feelings of inferiority are multiplied when they are forced to enter the world of the wealthy to seek help with their problems. Regardless of the welcome they receive when they enter the lawyer's office, it is humiliating to display their poverty to the affluent business men who sit in the waiting room with them. How can they help but doubt the quality of service they receive when they know the lawyer will receive a far larger fee and greater prestige from serving these other men? It only seems natural that he should afford more effort to these cases."

The brief also suggests that the average practitioner at the private Bar, by virtue of the economic environment within which he must, of necessity, work is not equipped to "know or understand many of the problems which face (the poor)."

The organization urges the adoption of the clinic approach. It suggests that each clinic should be "under the control of a board of directors consisting largely of the low income people it is designed to serve and of community leaders who have a genuine interest in the future of these people."

It also urges the use of native court workers as part of a clinic system.

VALLEY LEGAL ASSISTANCE CLINIC SOCIETY BRIEF

This is the society which is in charge of the operation of the rural clinic, centred on Duck Lake, Saskatchewan, referred to in Chapter IV of this report.

The brief deals at some length with the extent of rural poverty in Saskatchewan. It says:

> "Saskatchewan must be regarded as a primarily rural province. According to the 1966 census, 487,017 people were living in rural areas, being any centre under 1,000 population, out of a total population of 955,544. The latest population figures show the Saskatchewan population to be at 926,242 of which 391,119 live in Saskatchewan cities. This leaves a total

non-city population in Saskatchewan in 1971 of 535,123. It can only be assumed that from the degree of poverty found in rural areas that Saskatchewan with its predominantly rural population has more than its average share of rural poor. It is significant to note that though the bulk of our population does not live in cities, an astounding number of our lawyers in fact practice in cities ... The ratio of lawyers per population in Saskatchewan cities is one lawyer per 966 people. The ratio of lawyers in non-city areas is one lawyer per 7,445 people. ...

It therefore seems quite clear that the present distribution of lawyers makes a fee-for-service legal aid system, in which private lawyers are paid by the government, totally unrealistic in the rural communities. It is also quite clear that it is not really feasible to expect people with legal problems to make a trip of very considerable distances to an urban centre to seek a lawyer. It is also important to note that the great majority of lawyers and especially those practicing in smaller towns tend to have as their clientele the various business interests in the community and also in many cases the government. Quite clearly they would be at a conflict if they had to act for poor people who most often are in conflict with some government department or with some business interest."

Chapter VI

THE NEED FOR A LEGAL ASSISTANCE PROGRAM IN THE NORTHERN PART OF SASKATCHEWAN

As noted elsewhere in this report, the committee held a number of hearings through the northern part of the province, in an attempt to come to some understanding of the problems in that area, and the need for a legal assistance program. In that part of its work the committee received invaluable assistance from the Metis Society of Saskatchewan and from the Federation of Saskatchewan Indians. Officers of both of those organizations, prior to the dates when the meetings of the committee were held, spent considerable time acquainting local residents with the work of the committee and the matters which it was interested in enquiring into. In the result all of the meetings were well attended and exceedingly worthwhile for committee members.

In addition to its own work in the north, the committee watched with interest the unfolding of a program which the Saskatoon Legal Assistance Clinic commenced in July, 1972. It involved the provision of defence counsel, in a temporary and limited way, to three northern communities - La Loche, Isle a la Crosse and Buffalo Narrows. Lawyers' services were provided without charge to persons appearing in magistrates' court at the above centres. In addition to clinic staff, private practitioners from the city of Saskatoon also participated in this program. It continued until October, 1972. The committee is aware that the Clinic submitted reports to the Attorney General on this program and it includes, as Appendix XIV to this report, the final summary which the Clinic submitted to the Attorney General covering the activities of the program in October. This entire undertaking undoubtedly gave this Clinic an invaluable experience of the problems in the northern part of the province

insofar as the administration of criminal justice, and the operation of the legal system is concerned. The Clinic sums up its experiences in a portion of the brief which it submitted to the committee. That portion is quoted below. The committee finds itself in substantial agreement with the observations, and conclusions, which it contains. In main part they coincide with the experiences, and impressions, of committee members themselves throughout the northern meetings.

> "Per capita personal income in Saskatchewan is lower than it is in any other non-maritime province in Canada. And among the native people of Saskatchewan poverty is too mild a word to describe living conditions. A better word is squalor. Indians and Metis constitute a higher proportion of our population in this province than they do anywhere else in North America. In our north, the average income of all Indian and Metis families is about $500 per year.
>
> Northern Saskatchewan is an area of the province made up of widely scattered and isolated settlements and reservations. The large majority of its inhabitants are native peoples, many of whom speak a native language and have but a limited knowledge of English. They live in a different country than do we in the south. The language differences are naturally accompanied by vast cultural differences, some of which are extremely subtle but nonetheless leave their mark. The economy is depressed, with the result that there is little available employment. Those people who are employed are frequently engaged in occupations which are unknown in the southern part of the province - fishing, trapping, logging.
>
> These communities, far removed in almost every aspect from the characteristics of the rest of the province, inhabited by peoples who neither speak, think, or act in English, have been placed under the laws which govern the rest of the province. The laws are enforced by white police officers from the south, and by a white prosecutor and a white judge who are flown in monthly from the south. The law is neither understood nor respected - it is either feared or considered irrelevant. People know that the law exists - it is a travelling theatre dropped down from the sky once a month; one which everyone comes out to watch, if only for the entertainment.
>
> Since July of this year, the Saskatoon Legal Assistance Clinic has been involved in providing defence counsel, in a temporary and limited way, to three northern communities: La Loche, Ile a la Crosse, and Buffalo Narrows. The experience has been

a fascinating one for all involved, a discouraging one at times, but has prompted us to make certain obervations.

Although it may frequently appear that the enforcement of 'white man's laws' in northern Saskatchewan is an irrelevant process to the native people, if one accepts the proposition that all laws in Canada should be applied throughout, then it is obvious that free legal services must immediately be extended to the north. The process of justice there can only be described as something of a farce so long as it continues to be the case that, almost without exception, no person charged with an offence ever pleads not guilty. Although the Criminal Legal Aid Plan applies in northern Saskatchewan, it is almost never utilized due to the general inaccessibility of lawyers and ignorance of its existence amongst the natives. Even when legal aid lawyers are made available, as at present, in the three mentioned communities, the service which they are able to provide is necessarily inadequate. This is so for several reasons. They are not native, do not speak the native language, and generally have a very limited knowledge about the people, their culture and their problems. They are usually unable to effectively relate to the native people, who tend to regard lawyers in general, prosecutor or defence, with distrust and suspicion. The lawyers are not in the communities long enough to overcome these problems, or more often than not, to do adequate preparatory work on the cases. The community members have no apparent assurance after they have pleaded that their lawyer will truly represent them because when court is over he gets back on the same plane with the judge and the prosecutor to return to the south.

The previous discussion has dealtwith the non-existence or inadequacy of the northern legal services only in the context of criminal law. Other legal matters of major concern which have emerged, such as quasi-criminal offences, family legal problems and administrative law problems are never touched upon at present. And it is the case that the civil legal problems faced by native peoples are often ones to which southern lawyers would have had little or no exposure. The picture we have attempted to paint of the 'administration of justice in the north' is thus a bleak one. The situation is bleak. It is our hope that the prospects for improvements are not. ... We believe that it is of fundamental importance that native people are directly involved in the operation of their legal problems. We have no hesitation whatsoever in stating that our operations have been much more successful in communities where we have responsive contacts than in communities where we do not. A local person will know everyone in the community, where they live or how to find them. They speak the native language. They are insiders to the community and are trusted. They appreciate the interpersonal conflicts and relationships in

> the settlement. They are immeasurably more sensitive to and aware of local issues and problems. In short, respected members of the community who speak English as well as the native language are invaluable and fundamental to the effective organization of any legal services delivery program.
>
> There is a tremendous need for education about legal rights or responsibilities, but the effective ways for conveying such knowledge are not the techniques which have been traditionally used (i.e. speakers, workshops, etc.). Having a lawyer who is regularly accessible to deal with legal problems will at first, at any rate, be one of the most useful educational tools. A lawyer who lives in a central location in a group of settlements and reserves will grow more sensitive to the needs of his community than he would if he lived outside the area; as a result, he will be more capable of earning the respect and trust of the community.

The committee has also studied the report, made in 1972, of the Saskatchewan Correction Study Committee. It does not have special or separate figures for the northern division, but some of the statistics found in that report may be related to the northern division and a good deal of these statistics no doubt are produced in that division. The Correction Study Committee reported that, although persons of Indian and Metis origin only make up 8% of the province's population, this 8% produces approximately 50% of the prison intake population.

The same study further suggests that the future is very bleak. It states that 63% of the current Indian Reservation population is composed of teenagers and younger. It is this age group which is just now moving into the highest crime risk age category.

The above report further states that the Indian birth rate is about twice the national average, or 4.5%.

While specific statistics do not relate to the north, it is important to note from the report that the native population figures show totals much greater than the white population in the northern correctional areas

which are served by Prince Albert and Pine Grove. This reflects in part the concentration of native population in the northern division.

The Corrections Committee concluded that on the basis of present trends it is obvious that the Indian population will contribute disproportionately to the amount of crime in the province in the future.

The Corrections Committee recognized that the basic problems of native criminality must await a solution to the more general social and economic problems facing native people.

It is not difficult to summarize in a general way some of the social and economic problems facing people who live in the northern division. The Saskatoon Legal Assistance Clinic brief suggested that the average income of all Indian and Metis families in the Northern area is about $500.00 per year. Garth Cantrill, a probation officer from Buffalo Narrows who appeared before the committee, had this to say about the economic state of most of the residents of the north.

> "The main industries of the area are trapping and fishing. A 1971 survey done by the Department of Social Services showed that the average take home pay of people employed full-time in these industries was $70.00 per month. The low income levels result in a welfare dependency level of approximately 60% in summer which rises to 85% in the winter."

A Department of Indian Affairs official suggested that the welfare dependency figure amongst treaty Indians in the province averaged around 80%.

These figures show graphically that the society in the north is indeed unique in a devastating way. Alcohol, welfare dependency and crime plague a population which is in large part made up of persons of native origin. These figures point to the absolute necessity for native people to regain their pride and independence, both economically and socially. These figures show the need for enlightened community based legal services to

provide the native people with some assistance in this very difficult task. These figures show what white governments and white paternalism has done for the native people of the northern division. A legal aid program could play its part in assisting native people to begin their climb back up the ladder to the position of pride which they once occupied.

Chapter VII

GENERAL CONCLUSIONS

I. THE PROVINCE AS A WHOLE

From the outset of its enquiry, the committee has taken the position that whatever recommendations it might bring in must be designed to achieve the best possible legal aid scheme for poor persons. That is, the scheme must promote the interests of the poor, and serve their real needs. From what it has learned in the course of its enquiry, and from its deliberations, the committee has concluded that, in order to achieve the above goal, its specific recommendations must be structured on the basis of the following general considerations, many of which have been stressed in submissions made to the committee:

(A) A legal aid scheme must, in its administration and operation, be divorced as completely as possible from any government department or agency.

Many organizations, and individuals, who met with the committee in the course of its hearings throughout the province stressed this as a vital matter. Poor persons have, and with considerable justification, at least a skeptical, and on occasion antagonistic, attitude towards government administrative structures.

It is not merely, however, this attitude held by many of the poor which leads the committee to accept this proposal that a legal aid scheme should not function as part of a government department or agency. The committee supports this approach for two additional, and important, reasons. First, it is fundamental to the traditional role of a lawyer that he must be independent of any direct, or indirect, governmental or community pressures. If this is not the case then, wittingly or otherwise, he may fail properly to represent the interests of his client. Second, lawyers working within a legal aid scheme designed for poor persons may, from time to time, find themselves in conflict with a particular

government department or policy. This is not uncommon for any lawyer. The problems of poor people, however, may particularly give rise to this kind of situation. It would seriously impair the functioning of a legal aid program if its structure were such as to prevent it pressing matters and claims opposed, it might be, to the very government department or agency controlling it.

There is a further reason which leads the committee to support the above general approach. A legal aid program must be insulated against political pressure or patronage. Divorcing its structure, as far as possible, from any government department or agency will significantly assist in achieving this end.

(B) Legal aid should be regarded as a matter of right - not of charity.

The structure of the system, that is, should be such as to encourage both the person found eligible, and the professionals working it, to adopt this attitude.

How can this be achieved? In part, by some degree of local, community involvement by poor persons and their organizations in the establishment, operation and administration of a legal aid plan. Such involvement should encourage the attitude by poor persons that this is "their legal aid plan" under which professional services are available to them.

In part also, this aim may be achieved by professional lawyers, working in the scheme, being continuously exposed to the problems of poor persons and poor communities. Not only will they build up valuable expertise with respect to the legal problems of the poor, but they may also come to be regarded, by their clientele, as "their lawyers". The solicitor-client relationship - one of mutual trust, which is always so vital to the proper performance of a lawyer's task - may thus take on a new dimension for the poor person.

(C) A legal aid scheme should be capable of acting, on proper occasions, as a vehicle for social change.

This may happen directly or indirectly. Directly, a legal aid scheme should be so designed that it will recognize common problems faced by poor persons. Having isolated such problems, the structure of the system should be such that they can be dealt with perhaps by lobbying at the appropriate level of government, or before the appropriate government agency, for changes in the laws which produce the problems. Another approach might involve some type of "class action" leading to a judicial solution of problems faced by groups of poor persons.

Indirectly, this goal may be achieved through educational efforts. A legal aid scheme should make provision for programs designed to acquaint poor persons with their legal rights and obligations in all fields of the law which directly concern them in their daily lives. Eventually such programs should equip poor persons, in many instances, themselves to deal with their legal problems - and in some cases to prevent problems from arising. To the extent that this may happen it will assist in removing the sense of alienation from society (and from the legal system governing it) felt by so many of the poor.

(D) A legal aid scheme must be comprehensive.

That is, it must be capable of providing legal services in the solution of any problem faced by a poor person, where it would be reasonable for him to have the services of a lawyer. Further, "reasonable" is not to be judged by comparing the cash value of the legal services with the cash value of the result. The criterion must be the seriousness of the case or problem to the particular individual. Putting the matter another way, a legal aid scheme must not be limited to serving the poor person only when he has a "middle class law problem". The system must be available to the poor person not only to assist him in a divorce action, it must equally be there to help the person who is pressing a claim for unemployment insurance benefits, for workmen's compensation

benefits, for welfare benefits. These latter problems, as noted elsewhere in this report, are not capable of being serviced under fee-for-service systems since, most commonly, the value of the time which a private practitioner must spend on such a case will outweigh the dollar value of the return which the client seeks.

(E) A legal aid plan must provide good professional services.

The brief of the Law Society of Saskatchewan put this point succinctly in saying "care must be taken to ensure the same legal expertise and technical skill is available to those obtaining assistance under the plan as is available to others".

This point has two aspects. One of them, of course, is financial. Whether the lawyers working within a plan are on salary, or as private practitioners charging on a fee-for-service basis, the financial return to them must be competitive with professional earnings outside the plan. An examination of the tariff presently in use under the Saskatchewan Criminal Legal Aid Plan shows that it falls far short of this standard - it is grossly inadequate and unfair to lawyers asked to work under it.

The other aspect of this consideration has to do with professional skill. The committee has been impressed with the fact that many of the problems faced by poor people fall outside of those areas of law in which private practitioners are chiefly engaged. This is not surprising since, of course, the private Bar, as a delivery system, has developed in response to the requirements of a middle class clientele. A legal aid scheme for poor persons, accordingly, must be such as to encourage the development of new professional skills in dealing with the problems of the poor.

Yet another aspect of this consideration is psychological. Many of those appearing before the committee took the position that the poor are,

not uncommonly, reluctant to approach the ordinary private practitioner in his down-town office. It was suggested by these organizations and individuals that, physically, a legal aid scheme should provide for offices located in or near the communities where the clientele of the system live and which are designed so that the client will not feel uncomfortable in them. The committee concludes that there is some substance to this. That does not imply, however, any criticism of the professional person engaged in private practice in the province. For one thing, it does not suggest that the average practitioner has any kind of a discriminatory attitude towards poor persons. The committee is satisfied that the contrary is the case. Indeed, that is evidenced by the tremendous contribution which practitioners in Saskatoon have made, as earlier noted, to the operation of the Saskatoon Legal Assistance Clinic. Rather, to the extent that this is something of a problem for the poor person, it stems inevitably from the position which the private practitioner necessarily finds himself in. Again, he works within a system designed basically to provide legal services to middle class clientele. That fact will be reflected in various ways - including the location of his office, and the kind of office which he maintains.

(F) Provision should be made for the use of para-professional personnel.

There are two reasons for this. First, problems faced by poor persons will often contain elements which are non-legal. Thus, by way of example, a married woman who has been deserted by her husband may well require counselling services for herself and her children in addition to the assistance of a lawyer in pursuing the husband for support. Again, a claimant for workmen's compensation may be assisted by a person other than a lawyer in arranging up-grading courses to train the person for new kinds of job opportunities.

Second, para-professional personnel can assist significantly in many aspects of legal work. Thus, with limited training they could act as "duty

counsel".

In addition to the foregoing reasons, this kind of personnel could be of real use in achieving, and maintaining, the kind of community involvement earlier dealt with in this chapter.

II. THE NORTHERN PART OF THE PROVINCE

All of the foregoing considerations are to be taken into account, in the committee's view, in structuring a legal aid plan for the northern part of the province. Certain of them, however, loom even larger as necessary considerations in the north than they perhaps do in the south. One of those is the need for community involvement. In this connection, it is to be noted that both the brief of the Metis Society and of the Federation of Saskatchewan Indians stress this. In addition to a number of sociological and economic factors which make this desirable in the north, it is to be remembered that the traditions, and social structures, of native people lean significantly in this direction. Indeed, this has been recognized by the Department of Northern Saskatchewan in stating its philosophy as being "committed to the process of community consultation and community involvement in decision making".

The hostility of native people towards existing government structures underscores, in the committee's view, the requirement that a legal aid scheme be administered by some agency divorced as far as possible from government.

III. THE COMMITTEE'S ULTIMATE APPROACH TO ITS RECOMMENDATIONS

Having agreed that the foregoing considerations should govern the approach to its recommendations, the fundamental question which the committee then had to answer was "what delivery system, or combination of systems, would best accomplish them?"

It seems evident to the committee that, save at enormous expense, a system based on a "non-salaried" approach (as discussed in Chapter I) could not incorporate the kinds of educational programs which the committee regards as necessary. Private practitioners could, of course, provide this service. If called upon to do so, however, they would have to be paid on the basis of a fair tariff for the time involved. The private practitioner's "stock-in-trade" is his professional time. It would be totally unfair to expect him to devote part of that time to educational programs without paying a proper professional fee for it.

Further, the committee has concluded that, save again at enormous expense, a "non-salaried system" just cannot be expected to service the "uneconomic case". This problem has been discussed elsewhere in this report - notably in the portion dealing with the Ontario Legal Aid Plan. This kind of case, however, is not uncommonly of real importance to the individual poor person.

The committee sees another problem which a legal aid scheme based on a "non-salaried system" would face. A private practitioner working in it, but only devoting part of his time to clients of the system, could not be expected to have the same opportunity to detect common problems, and to suggest "group approaches" by lobbying or otherwise in solving them, as a lawyer working under a "salaried system" would have.

Another point is related to the foregoing. It has to do with the development of expertise with respect to the legal problems of poor persons. Of course the individual private practitioner, when consulted by a client of the system, could research the matters involved and competently service that client. Perhaps, however, a professional working within a "salaried system", and who would be required to deal with such problems far more often than his confrere at the private Bar, could be expected to develop an even greater degree

of professional skill. Furthermore, under a "non-salaried system" one might well find ten individual private practitioners in any given month researching the same kind of problem (and of necessity being paid an appropriate fee for the time involved) whereas one salaried lawyer need only undertake that exercise once.

Further, the committee sees great difficulty in providing for any real degree of community involvement in the operation of a legal aid program structured around a "non-salaried system".

All of the foregoing, then, leads the committee to lean in favour of a legal aid program which, basically, would adopt the clinic approach. That does not mean, however, that the committee sees no role at all for the private practitioner within the system. Quite the contrary - and rightly so. For one thing, the expertise which many members of the private Bar have developed in a variety of different areas of the law should be available to poor persons. Further, the very real sense of social responsibility which the average practitioner in Saskatchewan possesses should be allowed to play some part in the operation of a legal aid scheme. Finally, a legal aid scheme which provides for some reasonable degree of healthy professional competition between salaried and non-salaried professionals is, in the committee's opinion, desirable. It will assist in ensuring that the quality of legal services available to poor persons is kept at a high level.

Chapter VIII

RECOMMENDATIONS

GENERAL

It will be noted that, in its recommendations, the committee divides the northern part of the province from the south. It does so for two reasons. First, in the opinion of the committee the need for immediate implementation of a legal aid scheme in the north is a most pressing one. As will later be seen, the committee's recommendations with respect to the southern division do not call for immediate implementation. Second, the committee hopes that its report makes clear something of the peculiar needs in the northern division with respect to a legal aid plan. With these peculiarities in mind, the committee accordingly recommends a structure in the northern division which, both in administration and operation, differs to some degree from its recommendations as to the southern division.

A map of the province will be submitted with this report, showing the location of the boundary which the committee recommends between the northern and southern divisions. Appended to the map is a comment setting out the reason why the boundary line has been selected.

As will be seen when the committee's recommendations are read, it proposes, fundamentally, and as far as both divisions are concerned, the provision of legal services through the operation of community clinics with, however, some provision for participation by private practitioners.

The committee suggests that the name of the provincial program should be "Saskatchewan Community Legal Services".

In this general section the committee wishes to record its recommendation that this report should be made public, and discussion of it invited from

all of those persons and organizations interested in a legal assistance program.

CENTRAL ADMINISTRATION FOR THE ENTIRE PROVINCE

The committee recommends that there be a provincial central agency. It would have general administrative control of the scheme in both the northern and southern divisions. It should be made up of the following:

- 1 representative from the "central northern agency" (hereafter referred to);
- 1 elected representative from the advisory council (hereafter dealt with) of each local clinic in the southern division;
- 1 representative of the Law Society of Saskatchewan;
- 1 College of Law representative (in this connection the committee is mindful of the role which this college may well play in undertaking various training programs for personnel working within the system);
- 1 representative of the provincial government;
- 1 representative of the federal government (this recommendation is made by reason of the requirement by the federal Department of Justice, in connection with the cost sharing of criminal legal aid, that there be such a representative on the provincial agency);
- the provincial director (hereafter referred to).

The powers of this agency should be as follows:

- To receive the funds voted by the provincial legislature in each year for the operation of the plan in both divisions.
- In consultation with the central northern agency (hereafter dealt with), to divide the above funds between the southern and northern divisions.

- To administer the portion of the funds, in each year, devoted to the operation of the plan in the southern division.
- In consultation with the central northern agency, to prepare annual budgets to be submitted to the Lieutenant Governor in Council.
- In consultation with the central northern agency, to make an annual report to the provincial legislature (through its clerk) on all aspects of the plan, including recommendations for changes in it.
- In consultation with the central northern agency, to set the general policy of the plan in the southern division. (It being clear, however, that the agency should have no power to interfere in any way with the solicitor-client relationship, or to interfere in the conduct of any matter or business being handled by a clinic, or by a community legal service worker (hereafter referred to)).
- To employ, and to discharge for cause, the provincial director and the general counsel (hereafter referred to).
- To set, in conjunction with the Law Society of Saskatchewan, the tariff, both civil and criminal, in accordance with which private practitioners are to be paid when they participate in the legal aid scheme (as hereafter provided for).

The committee recommends that there be a secretariat attached to the provincial central agency. This division would furnish services not only to the southern division, but also to the north. It should consist of:

- A provincial director. He would be the chief administrative officer for the scheme throughout the province.
- A general counsel. He would be in general charge of the profess-

ional operation of all clinics. He would be available for special litigation services at the request of clinics, or consultations with them.

- A business manager. This official could also act as administrator of the Saskatchewan Criminal Legal Aid Plan, so long as it continues to exist (hereafter dealt with).
- A community development worker. This official's responsibility, in significant part, would be to stimulate the continued development of the legal aid program, notably in the southern division (as hereafter dealt with).

THE NORTHERN DIVISION

(A) General Structure

A clinic should be immediately located at La Ronge. Its staff should consist of the following:

- 3 salaried lawyers (one of whom will be the executive director of the clinic);
- 1 articling student-at-law;
- 2 law students, each working during the spring and summer months when university is not in session;
- 2 community legal service workers (recruited from the native population in the north).

The geographic area to be covered by the scheme should be divided into three parts. They should, amongst them, cover the entire northern portion of Saskatchewan. Their location is shown on the above map. The clinic lawyers, and students, between them will be responsible for serving each of these "clinic areas".

In suggesting the above division of the geographic area to be served, the committee has in mind, in part, that eventually there may be a demand, and need, for the development of additional clinics. Upon that happening, a clinic or clinics would then be established, with necessary staff, within one or more of the above defined areas.

In addition to the above community legal service workers, the committee recommends that four additional workers (again recruited from the native population) be employed to work at at least certain of those centres where His Honour Judge R. Francis sits to hold court. The final decision, however, as to precisely where each of these workers should reside, and which centres he should cover, would be left to the executive director of the clinic to make in light of his experience in administering the plan.

One of the clinic lawyers should be in attendance at each of the centres referred to above on the day when the magistrates' court is held there. In addition, he (or the articling student) should spend at least one additional day between court days at that centre.

The clinic staff, whether lawyer or community legal service worker, should so conduct his work as to make it clear to clients of the system that the legal aid scheme is entirely independent of the courts, and of law enforcement agencies. To that end the clinic should be provided with its own airplane, and pilot, and should have access to its own communication network.

(B) Administrative Structure

(i) Local Administration

There should be an advisory council drawn from the local community at each centre where there is a community legal service worker in residence. The number of members of this council should be fixed by the executive director, and might vary from centre to centre. As later recommended it will be part of the

function of the executive director, and of each community legal service worker, actively to encourage the development of these advisory councils. In so doing, the executive director, and worker staff, should informally seek the assistance of the Federation of Saskatchewan Indians and of the Metis Society.

The powers of an advisory council should be:

- To assess the work of the community legal service worker functioning in its district; to assess the work of the clinic in its district
- To advise the community legal service worker on general matters and problems (but not so as to intrude into any matter affecting an individual client of the system).
- To recommend to the clinic educational activities which should be undertaken in the area.
- To recommend to the clinic appropriate law reform activities which it might consider undertaking.
- To participate in the educational activities of the clinic in the area of the council.
- To arrange for participation in the election of representatives from the area of the council to sit on the central agency (hereafter referred to).
- To hear appeals by persons refused assistance by the clinic on the grounds of financial eligibility (hereafter dealt with).
- To hear and determine applications by persons who, having been found financially eligible for legal assistance, wish to retain the services of a solicitor in private practice, rather than have the clinic act for them, and to grant such permission (all hereafter dealt with).
- To establish meaningful, and on-going, liaison with all law enforcement officials in the area of the council.

(ii) Central Administration

The administration in the northern division must, of course, be knitted in to the provincial administration. That has been earlier provided for. At the same time, however, in the committee's view the administration of the northern division should have a significant degree of autonomy. There are two reasons for this. First, as has been seen, it is the committee's recommendation that the plan in the northern division should commence at once. Second, the administrative structure in the northern division should be such as to allow for the different needs, and local peculiarities, in the northern part of the province.

The advisory council, or councils, within each of the above "clinic areas" should elect one representative from each such area to sit as members of the central administrative agency for the scheme.

The central northern agency should consist of the following:

1. The above three representatives (when elected).
2. A representative of the Law Society of Saskatchewan, chosen by it.
3. A representative selected by the Lieutenant Governor in Council.
4. The executive director of the clinic. (Initially, he would act as chairman. At the end of one year the members of the central agency would elect a new chairman from amongst their numbers.)
5. The provincial director.

The persons referred to in the above paragraphs 2, 3, 4 and 5 would possess all the powers of the central agency, for the time being, until the representatives referred to in 1 are elected.

(iii) Powers of the Central Northern Agency

- To receive from the provincial central agency the portion of the

funds, voted by the provincial legislature in each year, which are to be used for the operation of the plan in the northern division and to administer that portion of those funds.

- To prepare annual budgets for the northern division to be submitted to the provincial central agency.
- To make an annual report to the provincial central agency on all aspects of the operation of the plan in the northern division, including recommendations for changes in it.
- In consultation with the provincial central agency, to set the general policy of the plan in the northern division (it being clear, however, that the agency should have no power to interfere in any way with the solicitor-client relationship, or to interfere in the conduct of any matter or business being handled by the clinic, or by a community legal service worker).
- To employ, and to discharge for cause, the executive director of the clinic.

(iv) The Executive Director

The first director should be selected by a committee consisting of a representative of the Law Society, the Dean of Law of the University of Saskatchewan, a representative of the Attorney General for Saskatchewan, a representative of the Federation of Saskatchewan Indians and a representative of the Metis Society. His appointment should later be confirmed, as a formality, by the central agency.

The executive director should have full power to employ, and to dismiss for cause, all necessary staff. This would include the employment of a financial administrator for the plan, the other clinic lawyers and students, the community legal service workers and necessary secretarial staff. In selecting those persons to be employed as community legal service workers, the executive director should consult with the Metis Society and with the Federation of Saskatchewan Indians.

The executive director would be responsible for the day-to-day operation of the clinic in all of its aspects, and for the supervision of the work of all community legal service workers.

(C) Jurisdiction of the Clinic

(i) In Criminal Matters

1. In all cases involving summary conviction criminal code offences, and other summary conviction federal offences, and all cases of indictable offences where a magistrate has absolute jurisdiction, a legally aided client should have the right to have the clinic act for him, or to choose a lawyer living and practicing in one or other of the clinic areas to represent him.

2. A legally aided client charged with an offence punishable by death, life imprisonment or for a term of ten years or more should have the right to have the clinic act for him, or to choose any lawyer entitled to

practice in Saskatchewan to represent him. (The choice would be made by the client from a panel of private practitioners, as hereafter dealt with.)

3. In any other case where a legally aided client is charged with a criminal offence, or an offence under any federal statute (not falling within paragraph (1) above), he would be limited to having the clinic act for him subject, however, to his right, with the permission of the advisory council of the clinic area in which he resides first secured, to retain a lawyer entitled to practice in Saskatchewan to represent him in place of the clinic.

(ii) Provincial Offences

In this class of case, the legally aided client should be limited to having the clinic act for him.

(iii) Civil Matters

A "fee generating case" should be excluded from the legal aid scheme. By that term the committee means a cause of action with respect to which the person asserting it might reasonably expect to be able to retain a lawyer on a contingency fee basis.

In all other civil matters, a legally aided client would be limited to using the services of the clinic, subject to his right, with the permission of the advisory council of the clinic area in which he resides first secured, to retain a lawyer entitled to practice in Saskatchewan to represent him in place of the clinic.

(D) Eligibility for Legal Aid

The clinic should be the sole intake centre for all legal aid applicants. It should be responsible for determining eligibility. The criteria should be as follows:

1. Any person on social aid should automatically be entitled to legal assistance.

2. In all other cases the clinic should consider the income, disposable capital, indebtedness, requirements of persons dependent upon the applicant, and such other circumstances as it deems to be relevant in assessing eligibility. Having done so, if the clinic then decides that the applicant's financial position is such that he could not engage the services of a lawyer in the ordinary way without causing serious hardship to himself or the members of his family, the clinic may authorize legal assistance subject to the client paying such part, if any, of the costs involved, and in such manner as the clinic may decide.

3. Notwithstanding that the clinic may determine that an applicant is financially eligible for legal assistance, it may nonetheless refuse the applicant if the clinic decides that it would be unreasonable to extend assistance to him, or if it considers that the cause or matter which the applicant wishes to pursue is frivolous or vexatious. (Save for this safeguard, the committee does not recommend that any particular proceeding, or matter, be excluded from the coverage of the plan.)

(E) Operation of the Clinic

1. As noted above, it should act as the "intake centre" for all applicants to, and clients of, the system.

2. It should provide legal services to individuals and groups in the manner, within the structure, and under the limitations spelled out above.

3. It should carry out educational programs, the general purpose of which should be to attempt to develop self-reliance, within the legal system, by poor people.

4. In proper cases, to encourage and to engage in law reform

activity.

5. It should have the right (through the executive director) to refer any matter to a private practitioner, or to consult a private practitioner on any matter. In the event of such referral, or consultation, the private practitioner would be paid in accordance with the regular tariff of the Law Society of Saskatchewan for his services.

6. In cases where a client, within the structure set out in these recommendations, is to choose a private practitioner to act for him, the clinic should then explain the panel from which the client may, if he wishes, choose his lawyer.

7. It should direct, and control, the work of the community legal service worker staff whether attached to the clinic itself, or acting in one or other of the clinic areas. This would, in part, involve continuation of the training of this staff.

8. It should, as noted above, determine eligibility for legal aid.

(F) Community Legal Service Worker Staff

The task of a community legal service worker, under the direction and control of the executive director of the clinic, should be:

1. To attend sittings of magistrates' court and to assist accused persons by explaining their rights, and representing them on adjournments and remands.
2. To make preliminary assessments of eligibility.
3. To refer proper cases to the clinic.
4. To assist in stimulating, and carrying out, the educational and law reform functions of the clinic.
5. To assist in the setting up of local advisory councils (as referred to above).

6. To assist the professional staff of the clinic in the preparation of cases.
7. To act as agent for the clinic lawyers in the community which he serves.
8. To maintain liaison with the clinic by such means of communication as are available to him (i.e. radio, telephone).
9. To assist in and encourage the development of welfare, rehabilitation and economic development programs and projects within northern communities.
10. To assist in, and stimulate, the organization of community self-help groups.

(G) Panels of Private Practitioners

The executive director should invite private practitioners in the province to advise him whether they are ready, within the limitations of the system set out above, to act on legal aid cases. Each such practitioner should be asked, in the event that he wishes to act, to advise the executive director of his experience and areas of specialty, if any. Every practitioner requesting to be placed on a panel should be so placed.

The executive director should have the right to remove the name of any private practitioner from a panel where, in his opinion, there is good cause for so doing. In such case, the executive director should notify the practitioner of his reason for so acting and the practitioner should have a right of appeal to a judge of the Court of Queen's Bench.

Where a legally aided client has the right, and exercises it, to choose a private practitioner to act for him, the executive director should have the right to discuss, and explain, the panel to that client, including the right to advise the client of the experience, and areas of specialty, of

each person on the panel.

(H) General Recommendations

In the opinion of the committee it would greatly assist in familiarizing residents of the northern part of the province with our legal system, and the administration of justice, if both the District Court and the Court of Queen's Bench were to hold hearings, both civil and criminal, at La Ronge. The committee realizes that there would be difficulties which would have to be surmounted in arranging for this. They include the provision of proper court facilities. The committee recommends that the Attorney General should consult with the judges of each of the above courts with a view to these arrangements eventually being made.

(I) A Possible Budget

The committee sets this out in Appendix XV to its report.

THE SOUTHERN DIVISION

(A) General

The committee recommends a system which, when fully implemented, would provide for the establishment of a local clinic in each of the Department of Social Service regions in the province.

(B) Clinic Staff

Each clinic will, of course, employ the necessary professional staff, including its executive director. Appendix XVI sets out an estimate as to the size of the professional staff probably needed in each clinic.

In addition to professional staff, the committee recommends that a community legal service worker should be employed for each lawyer at a clinic.

The staff should also include one secretary per lawyer.

The executive director of each clinic should be employed by the central provincial agency. This should be subject, however, to later ratification by the local advisory board (hereafter dealt with) attached to each clinic. The local board, however, should have the right to dismiss the executive director, subject to ratification in such case by the central provincial agency.

(C) Eligibility

Each local clinic would act as the sole intake centre for every applicant for legal assistance in its region.

Eligibility should be determined by the clinic staff. The committee recommends here the same criteria earlier set out in connection with its proposals for the northern division.

(D) Jurisdiction

(i) Criminal Matters

With respect to any criminal charge, a legally aided client should be free to have the clinic act for him or to select a lawyer from the private Bar.

It will be noted that the above recommendation differs from the committee's recommendations, with respect to jurisdiction in criminal matters, in the northern division. The reason for this is that, at the moment, there are no lawyers living and practicing in the northern division. Permitting a legally aided client in that part of the province to select a lawyer, in criminal matters, to represent him without any restriction could well result in total costs which would be astronomic. In opening up the right for a legally aided client, with respect to certain criminal matters, to select a private practitioner living

and practicing in the northern division, however, the committee does not intend this to be an empty recommendation. Rather, the committee hopes that it may assist in the development of a private Bar in that part of the province.

(ii) Provincial Offences and Civil Matters

With respect to both of these areas, the committee recommends that a legally aided client should be limited to having the clinic act for him subject, however, to the right of the executive director of the clinic to decide, for whatever reason might appear proper to him, to permit the client to retain the services of a private practitioner. One obvious occasion on which such a step would have to be taken would be a case in which the clinic would face a conflict of interest in representing one party, unless the other were referred to the private Bar.

It will again be noted that, with respect to civil matters, this recommendation does not precisely follow the similar one made with respect to the northern division. In that part of the province the committee recommends a limited right for a legally aided client to retain a private practitioner. One reason for this difference is the desirability of making some provision under which lawyers, now concentrated in the urban areas of the province, may begin to become acquainted with the problems of the north.

With respect to civil matters, the committee again recommends that the "fee generating case" should be excluded from the legal aid scheme.

(E) Operation of Each Clinic

In this connection the committee makes the same recommendations as are contained, under a similar heading, in the portion of this chapter dealing with the northern division, with appropriate variations being made in the paragraph numbered (7) there contained. (See pages 11 and 12, supra.)

(F) Community Legal Service Worker Staff

Here again, the committee makes the same recommendations with respect to the tasks of these workers as are contained in the section of this chapter dealing with the northern division save for the paragraph numbered (8) there set out, and with the word "southern" substituted for "northern" in the paragraph numbered (9) therein contained. (See pages 12 and 13, supra.)

(G) The Executive Director

This officer should have full power to employ, and to dismiss for cause, all necessary staff. This would include other clinic lawyers, students-at-law, community legal service workers and necessary secretarial staff. He would be responsible for the day-to-day operation of his clinic in all of its aspects, and for the supervision of the work of all community legal service workers.

(H) Clinic Advisory Council

Each local clinic should have an advisory council representative, directly or indirectly, of poor persons and their organizations within the clinic region. The executive director of the clinic should be chairman of this body. Its powers should be:

- To assess the work of the clinic, and to report to the central provincial agency thereon.
- To set the general policy covering the work of the clinic (but not so as to intrude into any matter affecting an individual client of the system).
- To recommend educational activities which should be undertaken in the clinic region.
- To consider, and recommend, to the clinic appropriate law reform

activities which the clinic might consider undertaking.

- To participate in the educational activities of the clinic.
- To hear appeals by persons refused assistance by the clinic on the grounds of financial eligibility.

(I) Panels of Private Practitioners

The executive director of each clinic should invite private practitioners in the province to advise him whether they are ready, within the limitations of the system set out herein, to act on legal aid cases. Each such practitioner should be asked, in the event that he wishes to act, to advise the executive director of his experience in areas of specialty, if any. Every practitioner requesting to be placed on a panel should be so placed.

The executive director should have the right to remove the name of any private practitioner from a panel where, in his opinion, there is good cause for so doing. In such case the executive director should notify the practitioner of his reason for so acting and the practitioner should have a right of appeal to a judge of the Court of Queen's Bench.

Where a legally aided client has the right, and exercises it, to choose a private practitioner to act for him, the executive director should have the right to discuss, and explain, the panel to that client, including the right to advise the client of the experience, and areas of specialty, of each person on the panel.

IMPLEMENTATION OF THE SYSTEM IN THE SOUTHERN DIVISION

The committee recommends that, in the southern part of the province, the plan be implemented in each region when, in the opinion of the central provincial agency, there has been a sufficient expression of community demand for, and interest in, the plan being extended to it. The reason behind this

recommendation is that, as the committee hopes it has made clear, it sees community involvement in the operation of a legal aid plan as one essential ingredient of it. That being so, in the opinion of the committee, it would make little sense to impose the scheme which it recommends on a community until there has been a reasonable showing of interest. All this means, of course, that it will be part of the task of the central provincial agency to educate people and organizations in the various regions about the plan. As noted earlier, it will be part of the task of the community development worker, a member of that agency, to undertake this function.

While the committee has noted above its particular reason for taking this position, it is aware that, in so doing, this recommendation is consistent with much of the traditions of Saskatchewan. Historically, that is, local interest and pressure has lain behind many of the significant steps taken by this province in its social legislation. Something of the same traditions are seen in various economic organizations which now play a real part in the life of the province.

It seems to the committee, also, that this recommendation has a practical advantage attached to it. It would permit, that is, the legal aid program to be brought in by stages. This would create an opportunity properly, and carefully, to assess the actual costs of the operation of the scheme before it was implemented on a province-wide basis. In Appendix XVII, the committee sets out its estimate of the cost of operation of the scheme when fully implemented. They necessarily proceed on the basis of untested assumptions.

It will be noted that the committee does not recommend a "staged introduction" of a legal aid scheme in the northern division. There are three reasons for this. First, in the committee's opinion the need for a legal aid scheme in the northern division is immediate and stark. Second,

there are no lawyers at all anywhere in the northern division who might be called on, in one way or another, to furnish temporary legal aid prior to the introduction of the scheme which the committee recommends. Third, while the activities of the Federation of Saskatchewan Indians and the Metis Society are rapidly involving many native people in organizational activity, there is still a sad lack of community organizations (compared with the southern part of the province) which could be counted on to express interest in the extension of a legal aid scheme to the north. It would be a hollow recommendation, that is, to require an expression of community interest before the scheme is extended to the north when there are few, if any, channels through which such interest might be expressed.

THE SASKATCHEWAN CRIMINAL LEGAL AID PLAN

Once a local clinic has been established then it will administer, and be the intake centre for, clients seeking assistance with respect to criminal matters. Accordingly, as the proposed system is implemented the existing Saskatchewan Criminal Legal Aid Plan will disappear. In the meantime, and in those regions where clinics are not set up, the committee recommends that the general responsibility for the operation of the existing criminal legal aid plan should rest with the secretariat referred to above. In particular, in the opinion of the committee it could be the task of the business manager to oversee its administration. The agency should have power, where it decides it is necessary to do so, to engage interviewing officers in those centres in the southern division where, currently, there are none.

In the committee's view, the central agency might well consider establishing a "zenith" telephone connection. Accused persons in parts of the southern division where no local clinic has yet been set up could then

phone into this central number, whereupon the machinery leading to the appointment of counsel could be put into operation.

While the Saskatchewan Criminal Legal Aid Plan continues to operate, the committee recommends that its eligibility criteria be adapted so as to bring them in line with the criteria which the committee recommends for its scheme. (See page 11, supra.)

SERVICE TO INMATES OF PENAL INSTITUTIONS

The committee has not overlooked this problem. As noted earlier, it was brought forcibly to the committee's attention in the brief of The John Howard Society. In the committee's view, the needs of these inmates for legal assistance could well be met by the staff of local clinics in the cities of Prince Albert and Regina. It is the committee's hope, indeed, that those centres may be amongst the first to press for the establishment of local clinics.

COST OF THE PROPOSED SYSTEM

Reference has already been made to the studies contained in the appendices to this report having to do with budget and cost. The committee only intends to make a general observation here. It is this: The Plan proposed by the committee would not be a cheap one. The committee makes no apology for that. While the potential burden on the taxpayer cannot be ignored, cost is not a criterion by which to judge the quality, and usefulness, of a legal aid program. Thus the committee has in no way been moved to adopt, basically, the clinic system in making its recommendations by reason of it being, in the committee's opinion, a cheaper kind of delivery system than others. That is not the fact of the matter. Thus, a plan patterned squarely on the legal aid program in Ontario would cost, the committee estimates,

$1.47 per capita. If the projections which the committee has made as to the cost of the system which it proposes for the southern division (when fully implemented) are correct, then the approximate per capita cost might be in the neighbourhood of $1.93. The reasons for this difference are that, under a "free choice, non-salaried system":

- the "uneconomic case" is not handled;
- remote areas are insufficiently serviced;
- there is no provision for the kind of educational programs which the committee recommends;
- there is very little opportunity, or provision for, the kind of law reform activity which the committee recommends.

If all of the above, vital, matters were to be added to a "free choice, salaried system" the per capita cost figure would dramatically increase. Then, indeed, the clinic system would be less costly.

DISSENTS

By Her Honour Judge T. Taylor

My dissent from majority Report of the Saskatchewan Legal Aid Committee relates only to the recommendations as to the provision of criminal legal aid.

In regard to the north, I oppose Recommendation No. 2 which appears under heading "Jurisdiction of the Clinic in Criminal Matters", and would change it to read:

> "That a legally aided client charged with an offence punishable by death or life imprisonment should have the right to choose the clinic or any lawyer entitled to practice in Saskatchewan to represent him."

Further, I would urge the same change be made in the Criminal Legal Aid Plan for the South of the Province, and this would be in substitution for the paragraph which now reads:

> "With respect to any criminal charge, a legally aided client should be free to have the clinic act for him or to select a lawyer from the private Bar."

I do not quarrel with the Recommendations that clinics should have the right to refer cases to private lawyers and that the client should be able to request the Advisory Council for permission to have a private lawyer act for him.

The reasons why the Community Legal Clinic method is the best method for delivering civil legal aid to those who cannot afford to pay, apply with equal force to the delivery of criminal legal aid.

Poor people's "criminal" problems are often a result of, or inseparable from, family problems, debt problems, landlord problems, etc. If the clinic is to be "their" clinic, it should follow their problem into the criminal court, when necessary.

Social workers or other types of para-professional workers are needed as much, if not more, in connection with criminal matters as civil matters, and private law firms do not provide such assistance. Even if many lawyers personally do give more than legal help to their clients, they cannot afford to do this on a regular basis.

Just as in civil areas, so there are areas of the criminal law affecting poor people in which clinic lawyers might be in a better position than lawyers in private practice to criticise and to work for reform - e.g. "poor people's crimes", like liquor offences.

I am concerned with the financial aspect of the fee-for-service

approach adopted in the Report, because experience in other jurisdictions has shown us how steeply and quickly the costs of such a plan will rise. I foresee that the province will be unable to extend the salaried service and the para-professional staff to the extent needed, if it is saddled with constantly mounting costs from the other sector. The Report's proposals for the north are only a skeleton compared to the need - and I fear that the need may not be met if we adopt the conservative fee-for-service approach to the provision of criminal legal aid.

By J.G. McIntyre, Q.C.

I am of the opinion that any person charged with a criminal offence should have the right to choose his or her lawyer and not be limited to a clinic lawyer only. I take this position for a number of reasons; firstly, that if a legal aid scheme is an attempt to provide poor persons with adequate legal service then the receiver of the service should be permitted the same choice of lawyer as a person of modest means. Secondly, I believe it is important that if a sound legal aid system is to be developed it is highly necessary that there be competition as between private practitioners and members of a clinic to ensure a high standard of legal services for poor persons.

I am aware that there are vast distances to be covered in the North and that there are many difficulties in travelling the North at certain times of the year and because of these features I am prepared to reluctantly agree with clause (c)(i)(1) re Criminal Matters which is found on page 9 of Chapter 8 of the report.

I do not agree with clauses 2 or 3 at the bottom of page 9 and the top of page 10, in Chapter 8 of the report because it seems to me that paragraph 3 provides even less choice on a more serious offence for an accused then is provided an accused in paragraph 1. I am satisfied that any offence

in the Criminal Code is a serious one but any offence over which a Magistrate does not have absolute jurisdiction is particularly serious and I feel that an accused poor person should have the right to choose his lawyer.

I would recommend that clauses 2 and 3 on pages 9 and 10 of Chapter 8 be deleted and the following inserted as clause 2:

> "(2) That a legally aided client charged with any other criminal offence shall have the right to choose his lawyer to represent him (choice would be made by the client either of a clinic lawyer or he could choose a lawyer from a panel of private practitioners as dealt with herein)."

I am also of the opinion that in view of the travel difficulties in the North that where a private practitioner represents a legally aided client that the clinic staff should handle all preliminary court appearances prior to the Preliminary Inquiry or Trial and should assist the private practitioner in any way possible and particularly in obtaining proofs of evidence.

R. Carter

Roger Carter, Q.C., Chairman

J.G. McIntyre, Q.C., Member

Her Honour Judge T. Taylor, Member

S.E. Halyk, Member

M.R. Heath

Mrs. M.R. Heath, Member

Linton J. Smith, Member

Chief Antoine Cote, Member

APPENDIX I

Re: Saskatchewan Legal Aid Committee

Last month the Honourable Roy Romanow, Attorney General for the Province, announced the appointment of the above Committee. Its task is to enquire into the area of legal aid and to bring in recommendations as to the type of legal aid scheme which the government might consider implementing in order to make legal services available to those citizens who are financially unable to secure them in the ordinary way. I have agreed to act as chairman of the Committee.

I enclose a copy of the Committee's terms of reference.

The Committee held its first meeting on May 23rd last, in order to settle, in a general way, the lines and areas of enquiry which we will probably be following. At that time the Committee decided, amongst other things, that it will certainly want to invite submissions from all interested organizations, such as yours - as well as from individuals. We felt, however, that before issuing invitations for such submissions to be made, the Committee should first gather in, and consider, all possible information and materials relevant to its task. The Committee felt that,

once this has been done, it will then be in a much better position to consider, and deal with, submissions from interested parties. At this preliminary stage, however, the Committee thought it would be useful to write to organizations such as yours in order to invite their suggestions and comments as to possible areas of enquiry which they feel the Committee might consider following, and also to invite suggestions with respect to relevant materials, or resource persons, which the Committee might look to by way of assistance in its work.

Hence this letter. We would be most obliged if you would give the above matter some thought. I will welcome any suggestions which you would like to make for the Committee's consideration.

Yours sincerely,

Roger Carter,
Dean.

RC*bh

Enclosure

APPENDIX II

August 15, 1972.

Re: Saskatchewan Legal Aid Committee

The Attorney General for Saskatchewan appointed the above committee last May. Its task is to consider the need, in the Province, for a scheme under which legal services would be made available to citizens who are financially unable to secure them in the ordinary way, and to recommend what type of system the Government of the Province might consider implementing. I am acting as chairman of the Committee.

Since its appointment, the Committee has been concerned with a review of the limited legal aid schemes currently in operation in Saskatchewan. (A general outline of them will be found in the enclosed document). It has also been gathering information about systems of legal aid being operated in other parts of Canada. We have now reached the point where we wish to meet with interested organizations and individuals in Saskatchewan to solicit their views about the need for a legal aid scheme in our province, the kind of scheme which might best meet those needs, how it should be funded and all other matters relevant to the committee's enquiry. We are most hopeful that your organization will want to meet with us in order to give us the benefit of your opinions, views and suggestions either by way of a brief, or through informal discussions with us.

In order to help you decide whether you can assist us in this way, I am enclosing a document setting out the committee's terms of reference, its membership, and some general information about legal aid plans now being operated in Saskatchewan and elsewhere. In addition, it goes on to suggest certain questions and topics which you might like to consider dealing with.

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I would be most obliged, then, if you would write to me in the next short while to let me know whether your organization wishes to meet with the committee, and whether it will want to submit a written brief or present its views through informal discussions. The committee will be arranging for informal gatherings with organizations wishing to meet with it in this way in the last half of September. Meetings to discuss briefs are planned for early October. If you intend submitting a brief, it should be sent to me by September 30th next. A brief need not be in any particular form.

I shall look forward to hearing from you.

Yours sincerely,

R. Carter

Roger Carter,
Dean of Law.

RC:klb

SASKATCHEWAN LEGAL AID COMMITTEE

General Information

1. The committee's terms of reference are as follows:

   (a) to review the entire system of legal aid in order to determine the needs of legal aid for the 1970's;

   (b) to examine and make recommendations as to the extent of the need for subsidized programs of legal assistance;

   (c) to uncover the causes of under-utilization of legal services by the poor, if the evidence suggests such under-utilization;

   (d) to articulate pre-conditions for adequate programs such as the criteria of eligibility, personnel requirements, and related matters;

   (e) to compare the various systems of organization and delivery of legal aid services to those in need which are now used in other jurisdictions.

2. The members of the committee are:

	(Phone)
Roger Carter, Q.C., Dean of Law, University of Saskatchewan, Saskatoon Campus.	343-4251
Her Honour Judge T. Taylor, Court House, Saskatoon, Saskatchewan.	652-4051
Mrs. M. R. Heath, 1003 Garnet Street, Regina, Saskatchewan.	525-8980
J. G. McIntyre, Q.C, 2236 Albert Street, Regina, Sasaktchewan.	527-2641
S. E. Halyk, Barrister, CN Towers, Saskatoon, Saskatchewan.	244-0132
Chief Antoine Cote, Badgerville Indian Reserve, Kamsack, Saskatchewan.	542-3372

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Linton J. Smith, Barrister, 653-5160
Saskatoon Legal Assistance Clinic,
311 - 20th Street West,
Saskatoon, Saskatchewan.

3. Current legal aid plans now operated in Saskatchewan.

In considering these plans, (as well as others), one has to keep in mind that our system of law is divided into "criminal law" and " civil law". In a general way at least, it is probably clear to everyone what is covered under "criminal law". "Civil law" refers to that art of the legal system governing all of the various aspects of life in society other than criminal conduct. Civil law includes landlord and tenant matters, family law problems, welfare problems, finance company problems, unemployment insurance problems, the whole field of commercial law, and so on.

(a) The Saskatchewan Criminal Legal Aid Plan

In 1967, the Government authorized the Law Society of Saskatchewan to set this plan up. Under it, a person chaged with the commission of a criminal offence and who is financially unable to retain a lawyer, can have counsel assigned to him. The lawyer who acts is paid a portion of his regular fee by the Government. This scheme is administered through local committees of lawyers who volunteer their time without charge.

As you will see, this plan is limited to the field of criminal law only.

(b) Legal Aid through the Department of Social Services

For some years this provincial government department has paid a small fee to a lawyer acting for a deserted wife, unable to pay for her own lawyer, in court proceedings to secure support for herself or her children from the husband.

In addition, the Department will pay part of the legal expenses of the parents of a child where proceedings are taken seeking to have the child removed from the home because of alleged neglect. Again, the parents must be in a position where they are unable, financially, to retain their own lawyer.

The above schemes are the only ones in the province which are supported out of provincial government funds.

4. Legal Aid Plans in Other Canadian Provinces

The provinces of Quebec, Nova Scotia, Ontario, Manitoba, and Alberta each have a government-sponsored scheme under which legal aid is made available to poor persons. Each of these plans cover both the fields of criminal and civil law.

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Basically, the above schemes follow one or other of the following plans:

(a) Free Choice.

A client chooses the lawyer he wants. If the client is eligible for legal services, the lawyer sends his bill to the government.

(b) Assigned Counsel.

The client who is entitled to legal aid applies to a committee, which will then assign him to a lawyer, in private practice, who has agreed to act under the legal aid scheme. The lawyer bills the government. (The present Saskatchewan Criminal Legal Aid Plan works on this basis.)

(c) Neighbourhood Law Offices.

A full-time staff lawyer, paid by the government, maintains an office in the area he serves. Clients eligible for aid are given legal assistance by the staff members at the office.

In many parts of the United States, legal aid in criminal matters is extended to poor persons through a system of Public Defenders. Under this plan, a full-time staff lawyer, employed by the government, appears in criminal courts to represent anyone charged with a criminal offence that requests his services.

Some of the advantages and disadvantages of each of the above systems are as follows:

(a) Free Choice.

Advantages: The client can choose any lawyer he wants to represent him provided that the lawyer agrees to handle legal aid cases, and provided that the lawyer will accept the particular client's case. Freedom of choice is considered to be very important in maintaining close lawyer-client relationships.

Disadvantages: The cost of this kind of system is high. Also, some argue that under this system lawyers do not become experienced in poor peoples' law as quickly as regular staff lawyers employed in public defender or neighbourhood law offices. It is also suggested by some, that under this system lawyers may not become as involved with the problems of poor people and their organizations as they may do under other systems.

(b) Assigned Counsel.

Most assigned counsel plans are now so operated that clients in fact pick the lawyer of their choice. Accordingly, basically the assigned counsel systems are becoming free-choice plans, and the same advantages and disad antages apply.

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(c) Neighbourhood Law Offices.

Advantages: It is argued by some that regular staff lawyers become more aware of poor peoples' problems, that they specialize in dealing with the problems of the poor and in assisting poor peoples' organizations to deal with governments and to make their positions in society better known. It is also suggested that this type of plan is cheaper for the tax payer since, for one thing, regular staff lawyers become more experienced in the kinds of problems that poor people face and can handle cases faster because of this experience.

Disadvantages: There is no freedom of choice of lawyers. A client can only secure legal assistance from the office in his area.

(d) Public Defender.

Advantages: This system is less costly than Free Choice and Assigned Counsel systems. Since this kind of approach is much the same as that involved with neighbourhood law offices, those supporting Public Defender systems claim the same advantages as with Neighbourhood Law Offices. Similarly, the same disadvantages apply.

5. Questions and Matters of Concern to the Committee.

The following list may help organizations and individuals interested in the work of the committee to formulate their own thinking in preparation for discussions with the committee. The list is not intended to be exhaustive. Nor is it intended that discussions with the committee should be limited to the matters listed.

(a) As far as criminal matters are concerned, is the present Saskatchewan Criminal Legal Aid Plan adequate?

(b) In the field of civil law, what types of problems do poor persons most frequently encounter?

(c) Apart from financial problems, are there any other reasons why poor persons may not be seeking legal assistance in situations where it could in fact benefit them? If so, then what are those reasons?

(d) Which of the plans, or systems, of legal aid listed above would be most desirable for Saskatchewan? Are there any alternatives to those schemes which you can suggest?

(e) Under any legal aid plan, there must be some rule to determine a persons' financial eligibility for aid. What should the criteria be? How should they be administered?

(f) There are under 500 practising lawyers in Saskatchewan. Most of them work in larger centres. There are no lawyers' offices located north of Prince Albert-Meadow Lake. With these facts in mind, how can one solve the problem of delivering legal services to the poor persons living in small rural centres and in the north of the Province?

.. 5

(g) As well as making the services of lawyers available to poor persons, should a legal aid plan also include provision for "para-legal" personnel, i.e. persons who are not lawyers, but who have skills and training in certain areas of the law or legal system? If so, what kinds of tasks do you see such persons undertaking?

If there is any further information which you would like to have in connection with the committee's work, please do not hesitate to ask for it. In such case, please feel free to speak to any of the committee members, or write to The Secretary, Saskatchewan Legal Aid Committee, College of Law, University of Saskatchewan, Saskatoon, Saskatchewan.

APPENDIX III

LIST OF ORGANIZATIONS AND INDIVIDUALS CONTACTED BY THE COMMITTEE

Organizations

Alcoholics Anonymous, Saskatoon

Alliance of Youth & Elderly, Saskatoon

Assoc. of Human Rights, Saskatoon

Canadian Bar Association, Regina

Canadian Mental Health, Regina

Church in Society Sub-Committee of Sask. Conference of the United Church, Regina

Community Clinic, Saskatoon

Company of Young Canadians, Saskatoon

Co-ordinating Council on Rehabilitation, Saskatoon

Council of Women, Saskatoon

Freedom Group, Regina

Friendship Inn, Saskatoon

Legal Assistance Clinic, Saskatoon

Lutheran Social Planning Council Regina

Mistawassis Development Society, Saskatoon

Mustard Seed, Regina

National Farmers Union, Saskatoon

One Parent Group, Saskatoon

Orange Benevolent Society, Regina

Regina Welfare Council, Regina

St. Leonard's Society, Windsor, Ontario

Salvation Army, Saskatoon

Salvation Army, Regina

Sask. Assoc. of Social Workers, Saskatoon

Sask. Council of Anti-Poverty Organizations, Regina

Social Action Committee of Unitarian Fellowship, Saskatoon

Status of Women Co-ordinating Committee Saskatoon

Unemployed Citizen's Welfare Improvement Council, Saskatoon

W.C.T.U., Saskatoon

Women's Liberation, Saskatoon

Workmen's Compensation Organization Saskatoon

Family Service Associations

Catholic Family Service Society, Regina

Catholic Service Bureau, Saskatoon

Family Planning Assoc., Saskatoon

Family Service Bureau, Regina

Family Service Bureau, Saskatoon

Inmates

John Howard Society, Saskatoon

John Howard Society, Regina

National Parole Service, Prince Albert

National Parole Service, Saskatoon

National Parole Service, Regina

Native People's Organizations

Federation of Saskatchewan Indians, Regina

Federation of Saskatchewan Indians Saskatoon

Federation of Saskatchewan Indians Prince Albert

Indian Cultural Centre, Saskatoon

Indian & Metis Friendship Society Saskatoon

Indian & Metis Friendship Society Regina

Metis Society of Sask., Regina

Metis Society of Sask., Saskatoon

Sask. Indian & Metis Department Regina

Sask. Indian Women's Association Punnichy, Sask.

Sask. Native Women's Movement Society, Saskatoon

Interested Parties

Conservative Party, Saskatoon

Liberal Association, Regina

New Democratic Party, Regina

Social Credit Party, Regina

University People

Mr. Pat Close, Ombudsman, Saskatoon

Mr. Bruce Davidson, Assistant to the Principal, U of S, Saskatoon

Mr. Wayne Emerson, S.R.C., Saskatoon

Miss Vera Pezer, Student Counselling Service, Saskatoon

Mr. Andrew Raczynski, Sedley, Sask.

Mr. Rich Sharpe, Star Counselling Saskatoon

Mr. Stewart Tasche, Student Union, U. of S., Saskatoon

Canadian Bible College, Regina

District Supervisors

F.A. Clark, Regina

R.B. Kohls, Fort Qu'Appelle

S.C. Read, North Battleford

W.R. Cooke, Saskatoon

H.A. Matthews, Prince Albert

J. Whitehawk, Yorkton

Regional Directors

L.W. Boyd, Meadow Lake

E.H. Gilchrist, Swift Current

M. L'Heureux, Prince Albert

G.J. Peterson, Moose Jaw

C.E. Smith, Regina

L.E. Brierley, Saskatoon

R.E. Hunks, North Battleford

Miss D.W. Moore, Weyburn

W.M. Sanderman, Melfort

B. Sprong, Yorkton

Probation Officers

Department of Social Services
Meadow Lake, Sask.

Department of Social Services
Moose Jaw, Sask.

Department of Social Services
Prince Albert, Sask.

Department of Social Services
Saskatoon, Sask.

Department of Social Services
Weyburn, Sask.

Department of Social Services
Melfort, Sask.

Department of Social Services
North Battleford, Sask.

Department of Social Services
Regina, Sask.

Department of Social Services
Swift Current, Sask.

Department of Social Services
Yorkton, Sask.

Police Forces

Chief R. Brooman, Prince Albert

Chief E.H.J. Gray, Davidson

Selmar Johnson, Regina

Chief J.E. McCardle, Weyburn

Chief R.F. Pollock, Estevan

Harry Valila, Saskatoon

Chief M.G. Crawford, Moose Jaw

Chief Albert Huget, Regina

Chief James Kettles, Saskatoon

Chief N. Peterson, Carrot River

Commissioner R. Ross, Regina

Board of Trade Members

Steve Boychuk, Kamsack
Wm. S. Cudmore, Canora
Ed Drebit, Wilkie
Mrs. Harold Erikson, Shellbrook
Burt Gibson, Birch Hills
Joe Hahn, Swift Current
Ken John, Estevan
Gwen Ludek, Broadview
Warren Page, Fort Qu'Appelle
Secretary, Cut Knife
Don Suchy, Meadow Lake
Howard Tansley, Wynyard
John Tokaryk, Waskesiu
Peter Wenger, Weyburn
Board of Trade, Saskatoon

Earl Brown, Moose Jaw
F. Derksen, Rosthern
Reg Duff, LaRonge
E.A. George, Regina
Mrs. Grace Gould, Big River
Mrs. Betty Helm, Lloydminster
C.J. Lanovas, Duck Lake
D. Mailer, Melfort
E.G. Rorke, North Battleford
Bert Senft, Spiritwood
Maurice Tallant, Melville
Mrs. M. Taylor, Yorkton
Al Towes, Hudson Bay
Mrs. Ellen Wilson, Carlyle

Church Heads

Rev. S.W. Anderson, Saskatoon
Rev. Otto Driedger, Regina
Rev. L.W. Fourney, North Battleford
Rev. Bruce Haskins, Regina
Most Rev. G.F.C. Jackson, Regina
Rev. O. Kaminski, Saskatoon
Most Rev. J.P. Mahoney, Saskatoon
Rev. C. McMurty, Saskatoon
Rev. A. Orthner, Regina

Most Rev. Aime Decosse, Gravelbourg
Right Rev. D.A. Ford, Saskatoon
Rev. Philip Fry, Regina
Rev. Dr. T.A. Hay. Regina
Dr. S.T. Jacobson, Saskatoon
Rev. Don Lawrence, Regina
Rev. W.L. McLeod, Saskatoon
Rev. M.C. O'Neill, Regina
Rev. K.J. Powers, Balcarres

Rev. L.A. Redekopp, Saskatoon

Rev. P.D. Ruddell, Moose Jaw

Rev. S.J. Sharkey, Tisdale

Right Rev. H.V.R. Short, Prince Albert

Rev. John D. Triesen, Saskatoon

Rev. Henry Voth, Herbert

Right Rev. J. Weber, Muenster

S.C.A.P.O. Members

City Centre Co-op, Regina

Mrs. Agnus Chouinard, Gravelbourg

Direct Charge Buying Club, Saskatoon

Help Each Other Live Progressively, Moose Jaw

Humboldt Improvement Council, Humboldt

Kamsack Self Help Group, Kamsack

Chumberland House Rehabilitation Committee, Cumberland House

Mar-Tux Anti-Poverty Group, Moose Jaw

P.A. Education & Betterment Group, Prince Albert

Regina Seekers of Security Society Regina

Regina Single Parents Improvement Association, Regina

Rights of Social Security, Yorkton

Sandy Bay Child Care Committee Sandy Bay

Swift Current Anti-Poverty Assoc. Swift Current,

Unemployed Citizens Welfare Improvement Council, Saskatoon

United Help Association, Moose Jaw

Yorkton Exclusive Entertainment Society, Yorkton

Yorkton Indian & Metis Community Club Yorkton

Provincial Council of Women - Local Councils

Mrs. Aden Cave, Moose Jaw

Mrs. T.W. Barmby, Saskatoon

Mrs. F.L. Forsythe, Regina

Mrs. P. Lindquist, Swift Current

Provincial Federated Societies

Progressive Conservative Women's Assoc., Asysham, Sask.

Sask. Assoc. for Mentally Retarded, Saskatoon

Sask. Business & Professional Women's Club, Saskatoon

Sask. Home Economics Assoc., Regina

Sask. Hospital Auxiliaries Assoc.,
Moose Jaw

Ukrainian Women's Assoc. of Sask.,
Saskatoon

Women's Institute of Saskatchewan
Turtleford, Sask.

Sask. Registered Nurses' Assoc.,
Saskatoon

United Church Congregational Life &
Work Committee, North Battleford

APPENDIX IV

BRIEFS AND SUBMISSIONS RECEIVED BY THE COMMITTEE

From Associations or groups

1. Baptist Union of Western Canada
2. Canada Manpower, Prince Albert
3. Carrot River Police Department
4. Catholic Family Services (Saskatoon)
5. Community Health Services (Community Clinic Saskatoon)
6. Community Switchboard, Regina
7. Department of Indian Affairs (Saskatchewan Region)
8. Department of Social Services (Provincial Office - Regina; Regional Offices - North Battleford, Saskatoon, Prince Albert, Regina)
9. Department of Northern Saskatchewan
10. Family Planning Association
11. Family Service Bureau, Regina
12. Family Service Bureau, Saskatoon
13. Federation of Saskatchewan Indians
14. Friendship Inn Society
15. Humboldt Improvement Council
16. John Howard Society
17. Kamsack Self Help Group
18. Law Society of Saskatchewan
19. Metis Society of Saskatchewan
20. Moose Jaw Police Association
21. National Farmers Union
22. National Parole Board
23. Native Alcohol Council
24. Native Court Worker Association
25. Operation Mustard Seed, Regina
26. Prince Albert Bar Association
27. Progressive Conservative Women
28. Provincial Council of Women
29. Regina Chamber of Commerce
30. Regina Council of Women
31 Regina Legal Assistance Clinic
32. Regina North West Constituency Assoc. (New Democratic Party)
33. Regina Police Department

34. Rights of Social Security
35. Royal Canadian Mounted Police ("F" Division)
36. Saskatchewan Association on Human Rights
37. Saskatchewan Association for Mentally Retarded
38. Saskatchewan Association of Social Workers
39. Saskatchewan Council of Anti-Poverty Organizations
40. Saskatchewan Federation of Labour
41. Saskatchewan Freedom Group Society
42. Saskatchewan Home Economics Association
43. Saskatchewan Registered Nurses Association
44. Saskatchewan Women's Institute
45. Saskatoon Legal Assistance Clinic
46. Saskatoon Police Association
47. Saskatoon Women's Liberation
48. Status of Women Co-ordinating Committee
49. Swift Current Chamber of Commerce
50. Unemployed Citizens' Welfare Improvement Council
51. United Church of Canada
52. Valley Legal Assistance Clinic
53. Women's Christian Temperence Union
54. Yorkton Friendship Centre

From Individuals

55. Judge O. Archambault, Prince Albert
56. Belt, Mrs. S.C., Spruce Home
57. Judge W.R. Bonnycastle, Prince Albert
58. Bayer, George, Regina
59. Cantrill, Garth, Buffalo Narrows
60. Daniels, Bill, LaRonge
61. Engh, Doug, Prince Albert
62. Fosseneuve, Roy, Cumberland House
63. Glass, Joseph, Kamsack
64. Mathews, Miss M., Saskatoon
65. McLeod, Mr., Regina
66. Muzelisky, Edward, Canora
67. Nordstrum, Hilmar, Saskatoon
68. Tallis, Calvin F., Saskatoon

APPENDIX V

QUESTIONNAIRE FOR JUDGES OF MAGISTRATES' COURT

Section I -- Saskatchewan Criminal Legal Aid Plan.

1. Centres Where You Sit.

	Centres Where You Sit.	Location of Court (i.e., Court House, Police Station, etc.).	Frequency (i.e., daily, weekly, etc.) at each centre.
(i)	_____	_____	_____
(ii)	_____	_____	_____
(iii)	_____	_____	_____
(iv)	_____	_____	_____
(v)	_____	_____	_____
(vi)	_____	_____	_____
(vii)	_____	_____	_____
(viii)	_____	_____	_____

2. Type of cases heard (approximate percentage over last 12 months).

   (i) City Police _____
   (ii) R.C.M.P. Cases _____
   (iii) Local or Municipal Police _____

3. Approximately how many cases under The Juvenile Delinquents Act have you heard over the last 12 months?

   _____

   How many were legally aided (approximate percentage)? _____

4. Approximate number of criminal code charges heard each month during the past year. _____

5. In what percentage (approximately) of criminal code matters do accused persons have their cases disposed of in their entirety without the appearance of any legal counsel on their behalf? _____

6. Do you know if counsel appearing for an accused is legal aid counsel? _____

   If so, how do you know?

7. What is the approximate age range of the average accused appearing before you who receives legal aid? _____

8. In how many cases (approximately) in the last year have you actually initiated and assisted in the preparation of a legal aid application for an accused?

_____

9. If you sit in a locality where there is no local legal aid committee, what system do you use for appointing legal aid counsel?

What do you do if an accused requests a particular counsel?

10. Do you feel that the eligibility requirements under the Saskatchewan Legal Aid Plan are (circle):

(i) too low
(ii) about right
(iii) too high

Have you any comments about what the eligibility requirements should be?

11. Is it more or less difficult for an accused to acquire legal aid counsel in rural than in urban areas?

_____

Why?

12. Do some lawyers in rural areas object to taking legal aid cases? _____

    If so, is this a common reaction and why does it occur?

13. In your opinion are there enough lawyers in your area who handle criminal cases to adequately supply present legal aid needs under the Saskatchewan Plan? _____

    Have you any comments or suggestions pertaining to the above question?

14. What length of experience at the Bar does the average legal aid counsel have?

15. At what stage in criminal proceedings do you feel an accused should have access to counsel?

16. Do you feel that accused persons have (in the absence of professional advice) a sufficient understanding of their rights under the criminal law?

    In relation to the above question, what improvements could you suggest?

17. What is the approximate percentage of native persons charged in criminal cases in your court? _____

18. Do you feel that native accuseds understand their rights within the criminal process as well as non-native accused persons? _____

Have you any comments about the criminal process as it is applied to native accuseds? For example, do you feel that native accuseds might feel more assured if they had a native person with some legal training whom they could consult before they appear in court? Are language difficulties common?

19. Have you any comments about the Saskatchewan Criminal Legal Aid Plan which you have not already made in answering the above questions?

Section II -- Legal Aid Provided by Department of Social Services in Proceedings Under the Deserted Wives' and Children's Maintenance Act and in Child Neglect Cases Under the Child Welfare Act.

1. Over the last twelve months, approximately how many cases have come before you
   (a) under the Deserted Wives' and Children's Maintenance Act? _____
   (b) involving child neglect? _____

2. Please indicate the approximate percentage of the above cases that have involved legal aid:
   Deserted Wives' and Children's Maintenance Act -- _____
   Child neglect -- _____

Section III -- Legal Aid in Cases Involving Provincial Offences.

1. At present, of course, there is no provision for legal aid in the above cases. Do you think there should be? _____

   If so, what types of provincial offences should be covered under a legal aid scheme?

Re: Saskatchewan Legal Aid Committee

The Attorney General for the Province appointed the above Committee last May. Its task is to inquire into the area of legal aid and to bring in recommendations as to the type of legal aid scheme which the Government might consider implementing in order to make legal services in both civil and criminal matters available to those citizens who are financially unable to secure them in the ordinary way. I have agreed to act as chairman of the Committee.

I enclose a copy of the Committee's terms of reference. From it you will see that the Committee is required to review the operation of existing legal aid schemes in the province. In that connection we are chiefly concerned with the legal aid plan covering criminal matters. Your Bench is, of course, the one which is most significantly involved in the operation of this scheme. We would be most grateful if we could enlist your co-operation in providing us with certain information having to do with it. In that connection, the Committee staff has prepared a questionnaire to be sent to each member of your court. I enclose a copy of it herewith. I don't like troubling people with questionnaires, but I would be most obliged if you would complete the document and return it to me. In doing so, you should be aware that we intend to keep the replies strictly confidential. To the extent that the information disclosed by them may be used in the Committee's eventual report, it will not in any way be connected with a particular judge.

In going over the questionnaire, it may occur to you that some of the information which we are seeking ought to be readily available in the files of the Department of the Attorney General. Unfortunately, we find that this is not the case. Since the legal aid scheme came into effect, files relating to it have not in any way been separately kept by the department. We find, accordingly, that it would be an almost super-human task to attempt to separate the particular files which concern us.

.. 2

I suggest that you might like to read the entire questionnaire through before answering it, since the nature of the subject matter necessitates some overlap.

You will no doubt find some of the questions not relevant to your particular case load or circuit. Where this is so it would be helpful if you could briefly indicate why the particular question does not apply to you.

It goes without saying that there is no need to have the questionnaire typed out.

As you will see, the questionnaire is in three parts. The main portion is section one, which is devoted to the criminal legal aid plan. The second section has to do with the limited legal aid schemes administered through the Department of Social Services. The third section elicits your suggestions as to the possible extension of legal aid to provincial offences.

Apart from the questionnaire, the Committee will be keenly interested in any general or specific comments you might like to make about the existing legal aid schemes in the province. I hope that you will feel free to make them in your reply.

The Committee is operating under some time pressure. We plan to have our work completed, and the report into the Attorney General, by about the end of next October. That being so, I would be most grateful if you could find time to complete the questionnaire and return it to me in the next short while.

Many thanks indeed for your assistance.

Yours sincerely,

Roger Carter,
Dean.

RC:klb

Enclosure

APPENDIX VI

QUESTIONNAIRE FOR PRACTICING BAR

NOTE: Would you please answer the following questions from your own experience and not on behalf of your firm. Each member of the firm is receiving the same questionnaire.

PART A - GENERAL

1. Centres where you practice (i.e. where offices located) — Frequency (i.e. daily, weekly etc.) at each centre, if applicable.

   (i) _____ _____

   (ii) _____ _____

   (iii) _____ _____

   (iv) _____ _____

   (v) _____ _____

2. Type of practice (approximate percentage over last 12 months).

   (i) Mainly civil _____

   (ii) Mainly criminal _____

   (iii) Mixed _____

PART B - EXISTING LEGAL AID IN SASKATCHEWAN

Section I - Saskatchewan Criminal Legal Aid

1. How many criminal matters have you acted on in the last year? _____

2. What is the approximate age range of the average accused person with whom you deal? _____

3. In how many cases (approximately) in the last year have you acted as legal aid counsel? _____

4. If you practice in a locality where there is no local legal aid committee, what system is used for appointing legal aid counsel?

   What is done if an accused requests a particular counsel?

5. Do you feel that the eligibility requirements under the Saskatchewan Legal Aid Plan are: (circle)

   (i) too low

   (ii) about right

   (iii) too high

   Have you any comments about what the eligibility requirements should be?

6. Do you feel the criminal legal aid tariff is inadequate? Have you any comments?

7. Do some lawyers in rural areas object to taking legal aid cases? _____ If so, is this a common reaction and why does it occur?

8. In your opinion are there enough lawyers in your area who handle criminal cases adequately to supply present legal aid needs under the Saskatchewan plan?

9. Approximately how many cases under the Juvenile Delinquents Act have you been involved in over the last 12 months? _____

10. In terms of length of experience at the bar, who handles the legal aid cases in your firm?

    _____

11. At what stage in criminal proceedings do you feel an accused should have access to counsel?

12. What approximate percentage of your clients in criminal matters are of native ancestry?

    _____

13. Do you feel that native accuseds understand their rights within the criminal process as well as non-native accused persons? _____

    Have you any comments about the criminal process as it is applied to native accuseds? For example, do you feel that native accuseds might feel more assured if they had a native person with some legal training whom they could consult before they appear in court? Are language difficulties common?

14. Have you any comments about the Saskatchewan Criminal Legal Aid Plan which you have not already made in answering the above questions?

Section II - Legal Aid provided by Department of Social Services in proceedings under the Deserted Wives' and Children's Maintenance Act and in Child Neglect cases under the Child Welfare Act.

1. Over the last twelve months, approximately how many cases have you been involved in

   (a) under the Deserted Wives' and Chilfren's Maintenance Act? _____

   (b) involving child neglect? _____

2. Please indicate the approximate percentage of the above cases that have involved legal aid:

   (a) Deserted Wives' and Children's Maintenance Act _____

   (b) Child neglect _____

PART C - QUESTIONS RELATING TO LEGAL AID - CIVIL AND CRIMINAL

Background Information - Basically there are three general types of legal aid systems in operation in Canada and the United States. A very brief summary of how each plan operates is set out below.

(1) Neighbourhood Law Offices - Some jurisdictions have government funded neighbourhood law clinics which have permanent legal staff who handle both civil and criminal work. These offices are usually located in "poor" areas. Such offices are involved in education programs, in assisting "poor people's" organizations, etc. as well as in advising and carrying on litigation for poor people. Quebec and Nova Scotia have adopted the neighbourhood law office with some modification.

(2) Assigned Counsel - Ontario, Manitoba, New Brunswick and Alberta have adopted this type of system. Basically, it aims at providing the financial means for persons requiring legal aid to retain a lawyer of their choice who is then compensated for his services by, for example, the Ontario Legal Aid Plan on the basis of seventy-five percent of an approved tariff of fees. The lawyer providing legal aid under the Ontario scheme is not an employee of the government but is practicing independently on a retainer provided by his client through legal aid.

(3) Public Defender - Public defender schemes operate in certain parts of the United States. Nova Scotia has a combination of the public defender and neighbourhood law office plans. The public defender, broadly speaking, is an

office maintained by the government or municipality whose function it is to represent needy persons accused of criminal offences. The staff of the public defender's office are thus lawyers who are engaged in this work as a full-time occupation. In most cases the public defender system is used in criminal matters only.

1. In your opinion, is there any need to extend legal aid beyond the schemes presently operating in Saskatchewan?

2. How far should legal aid extend in civil matters? For example should it be limited to matters involving litigation or should it extend to areas of legal advice such as consumer protection, consumer debt problems, unemployment insurance problems, welfare difficulties and other related questions which are not strictly matters which have a litigation potential?

3. Should there be any limit to the types of legally aided cases which may be litigated? For example, should divorce actions, class actions on behalf of "poor people's groups", mortgage and conveyancing, etc. be included in a plan?

4. Should a legal aid plan cover provincial offences? e.g. driving offences, etc.

5. Do you think most lawyers practising in Saskatchewan are competent (without first researching the areas) to deal with problems which poor persons are perhaps commonly concerned with, i.e. welfare rights, unemployment insurance claims, workmen's compensation?

6. How should legal services, both civil and criminal, be delivered to the rural poor? (You may want to keep in mind that practitioners are mainly concentrated in urban centres)

7. How should legal aid be delivered to poor persons in the far north? (There are no lawyers practicing north of Prince Albert and Meadow Lake.)

8. What type of legal aid plan would you like to see implemented in Saskatchewan?

9. Do you think a uniform plan for the entire province would be workable? If not, what variations do you suggest and why?

10. Should a practitioner acting under a legal aid plan be paid his full regular fee or only part? If only a portion is paid, then what should the percentage be?

11. What should the criteria for eligibility under a legal aid plan be? How should it be administered?

12. Some jurisdictions use para-legal help. That is, people who are not lawyers but have some legal experience to interview, investigate, educate and in some cases advise. What do you think of the use of para-legal personnel in the delivery of legal aid to urban people, rural people, people in the far north?

13. In light of the above questions and information on legal aid, have you any other comments which the questionnaire has not covered regarding the subject of legal aid generally in our province, in the past and for the future?

_____

Name

_____

Firm name

UNIVERSITY OF SASKATCHEWAN

SASKATOON, CANADA

DEAN OF LAW

August 16, 1972.

Dear Colleague.

Re: Saskatchewan Legal Aid Committee

As you will know, the Government of Saskatchewan appointed the above committee last May. Basically, its task is to review the legal aid schemes presently operating in the province, to determine the need for legal assistance by financially underprivileged persons in Saskatchewan and to recommend what type of legal aid scheme or schemes the Government might consider implementing. The committee is representative of the Magistrates' Bench, the Law Society, the Law College and the public. I am acting as chairman of it.

The work of the committee is obviously of great potential importance to every member of our profession. It is equally obvious that the committee, in order properly to carry out its task, needs the full co-operation of every practitioner in gathering necessary information and opinions.

We have prepared a form of questionnaire to be sent to every member of our Law Society. I enclose a copy of it herewith. It will be of great assistance to the committee if you would take a few minutes, in the next short while, to answer it. It should then be returned to:

William Wardell;
The Secretary,
Saskatchewan Legal Aid Committee,
College of Law,
University of Saskatchewan,
SASKATOON, Saskatchewan. S7N 0W0

In addition to completing the questionnaire, I hope you will not hesitate to write to me, setting out any comments or suggestions you might care to make in connection with the matter of legal aid.

.. 2

The questionnaire, and any additional comments you may let me have, will be held in confidence by the committee in the sense that any reference to this material in the committee's report will not identify any individual practitioner.

I am sure that I can count on your co-operation, and my thanks for it.

Yours sincerely,

R. Carter

Roger Carter,
Dean of Law.

RC:klb

Enclosure

APPENDIX VII

Breakdown of the Legal Aid Dollar

	Year Ended March 31		
	1971	1970	1969
RECEIVED			
Province of Ontario	$0.94	$0.93	$0.95
Contributions from clients	0.03	0.04	0.04
Client recoveries	0.03	0.03	0.01
	$1.00	$1.00	$1.00
PAID			
Fees and Disbursements —			
Criminal	0.33	0.34	0.43
Divorce	0.26	0.22	0.09
Other Civil	0.13	0.15	0.16
Duty Counsel	0.10	0.10	0.12
	0.82	0.81	0.80
Area Directors' retainers and staff salaries	0.12	0.13	0.13
Other administrative expenses	0.06	0.06	0.07
	$1.00	$1.00	$1.00

APPENDIX VIII

Breakdown of Persons Assisted by Legal Aid 1968-71

Year Ending March 31	Total Applications for Legal Aid Certificates	Certificates Issued				Persons Assisted by Duty Counsel		
		Provisional*	Certificates of Eligibility					
			Criminal	Civil	Total	Criminal	Civil	Total
1968	54,760	9,550	18,502	20,358	38,860	52,668	14,536	67,204
1969	57,884	3,196	22,184	25,516	47,700	65,598	13,985	79,583
1970	51,792	2,042	21,131	21,169	42,300	62,703	13,440	76,143
1971	66,235	1,885	27,720	27,243	54,963	73,848	13,575	87,423

* Provisional Certificate - Authorizes such legal services as are necessary to protect the rights of a client until the report of the assessment officer and the issuance of a permanent certificate.

APPENDIX IX

Legal Aid Plan

Receipts and Disbursements, 1968-71

Receipts	Year Ending 1968	1969	1970	1971
Province	3,890,000.00	7,032,000.00	8,146,000.00	10,221,600.00
Contributions from clients	130,613.09	304,830.08	341,740.93	312,554.99
Judgments and costs awarded	10,337.31	97,748.39	223,522.39	303,402.90
Misc.			24,611.31	579.12
Disbursements				
Legal Aid fees and Disbursements	1,851,825.88	5,059,707.65	6,133,335.80	7,736,760.13
Duty Counsel fees and Disbursements	849,472.70	881,064.09	863,710.97	1,024,644.93
Administration	1,379,020.18	1,540,444.90	1,676,665.96	1,975,546.37
Total	4,079,818.76	7,481,216.64	8,673,712.73	10,736,951.43
				10,736,951.43

APPENDIX X

Legal Aid Fees and Disbursements

	Fees				Disbursements				Total			
	1968	1969	1970	1971	1968	1969	1970	1971	1968	1969	1970	1971
nal	1,389,652	3,089,652	2,766,072	3,367,240	55,374	175,402	174,998	201,426	1,444,926	3,211,285	2,941,070	3,568,666
	355,950	1,536,179	2,520,074	3,125,686	26,785	249,385	579,740	908,138	382,735	1,785,564	3,099,814	4,033,824
e	14,463	17,892	28,587	77,560	205	460	350	3,458	14,668	18,351	28,937	81,018
	1,759,965	4,587,953	5,314,733	6,570,486	91,361	469,799	818,602	1166,274	1,851,326	5,059,708	6,133,335	7,736,760

	Completed Cases				Average Cost per Case			
	1968	1969	1970	1971	1968	1969	1970	1971
Criminal	10,708	19,436	16,918	19,986	134.94	165.22	173.84	178.55
Civil	4,227	12,282	13,535	15,143	90.54	149.38	229.02	266.38
Advice	383	522	816	2,092	38.30	35.16	35.46	38.72
Total	15,318	32,240	31,269	37,221	120.27	155.56	194.12	206.42

APPENDIX XI

Duty Counsel Fees

	Fees & Disbursements				Persons Assisted				Average Cost Per Person Assisted			
	1968	1969	1970	1971	1968	1969	1970	1971	1968	1969	1970	1971
Criminal	697,081	718,081	694,45	843,082	52,668	65,598	62,703	73,848	13.24	10.95	11.08	11.41
Civil	152,392	162,466	169,267	181,563	14,536	13,985	13,440	13,575	10.48	11.62	12.59	13.37
Total	849,473	881,064	863,712	1,024,645	67,204	79,583	76,143	87,423	12.64	11.07	11.34	11.72

APPENDIX XII

AMOUNTS PAID BY THE DEPARTMENT OF THE ATTORNEY GENERAL TO PRACTITIONERS ACTING UNDER THE SASKATCHEWAN CRIMINAL LEGAL AID PLAN FOR THE YEAR COMMENCING APRIL 1971 TO MARCH 1972.

Locality	Amount Paid Out For Legal Aid	Legal Aid Caseload
Assiniboia	$ 51.00	1
	51.00	1
Davidson	19.53	1
	19.53	1
Esterhazy	595.00	3
	595.00	3
Estevan	7,690.34	43
	5,496.70	23
	2,193.64	20
Eston	409.00	3
	409.00	3
Flin Flon	195.50	2
	195.50	2
Gravelbourg	265.60	3
	265.60	3
Humboldt	594.31	5
	559.31	4
	35.00	1
Kamsack	7,852.69	107
	7,852.69	107
Kelvington	40.00	2
	40.00	2
Kerrobert		
Kindersley	582.16	3
	582.16	3
Lloydminster	80.00	3
	80.00	3
Maple Creek	15.00	1
	15.00	1
Meadow Lake	906.24	14
	433.10	9
	473.14	5

Locality	Amount Paid Out For Legal Aid	Legal Aid Caseload
Melfort	$ 4,173.45	55
	80.00	2
	2,981.30	40
	175.00	3
	937.15	10
Melville	8,880.64	120
	510.90	8
	8,180.24	107
	55.00	3
	134.50	2
Moose Jaw	8,889.30	79
	831.65	10
	1,097.33	60
	499.00	8
	461.32	1
Moosomin		
North Battleford	8,238.49	100
	625.00	22
	766.90	22
	65.00	2
	6,274.71	42
	491.88	11
	15.00	1
Outlook	50.00	1
	50.00	1
Prince Albert	29,326.25	316
	5,173.74	43
	2,385.60	31
	89.00	2
	8,685.25	88
	1,474.01	34
	7,844.50	68
	668.60	12
	1,107.90	18
	574.70	14
	1,097.95	1
	225.00	5
Regina	80,846.56	925
	685.00	14
	3,058.76	24
	2,495.08	36
	3,817.37	5
	1,087.29	19
	75.00	1
	79.24	3

Locality	Amount Paid Out For Legal Aid	Legal Aid Caseload
Regina (continued)	$ 150.00	1
	453.32	6
	1,807.62	26
	5,082.55	50
	2,048.59	28
	4,585.98	79
	551.60	9
	515.00	14
	4,260.81	43
	802.40	14
	606.10	6
	9,533.90	127
	440.00	7
	3,075.54	40
	9,069.56	120
	2,305.00	24
	496.00	7
	21,931.15	186
	195.00	3
	901.06	18
	737.64	15
Rosetown	100.00	2
	100.00	2
Rosthern		
Saskatoon	29,508.52	440
	655.00	18
	2,665.60	29
	320.00	6
	581.33	11
	570.00	11
	355.00	9
	2,190.20	35
	1,661.68	16
	730.00	14
	949.27	12
	527.35	7
	485.94	10
	600.00	14
	495.00	3
	2,047.50	14
	315.80	7
	815.00	10
	905.00	15
	560.00	9
	60.00	3
	1,791.68	25
	160.00	5
	295.00	5
	170.00	7

Locality	Amount Paid Out For Legal Aid	Legal Aid Caseload
Saskatoon (continued)	$ 95.00	3
	65.00	1
	344.70	4
	315.00	10
	1,261.20	17
	482.50	9
	3,806.21	42
	658.00	17
	2,518.46	40
	56.10	2
Shaunovan	2,764.53	2
	642.57	1
	2,121.96	1
Swift Current	3,483.25	40
	350.00	7
	2,318.25	16
	410.00	7
	405.00	10
Tisdale	90.00	2
	90.00	2
Weyburn	1,831.20	33
	766.00	14
	200.00	4
	865.20	15
Wynyard	4,244.55	41
	4,244.55	41
Yorkton	6,930.32	62
	30.00	1
	4,401.63	30
	1,160.00	5
	174.00	1
	699.69	15
	35.00	1
	430.00	9
Saskatchewan	$197,358.43	2,302

APPENDIX XIII

SASKATOON LEGAL ASSISTANCE CLINIC
CASELOAD

Month No. of Files Opened	June 1971	July 1971	August 1971	Sept. 1971	Oct. 1971	Nov. 1971	Total	% of Total
Total Files	146	184	120	101	123	94	768	
Family Problems	54	61	48	32	55	25	275	37.37
Landlord & Tenant	6	15	8	7	7	11	54	7.03
Debts & Consumer Credit	36	46	30	29	21	29	191	24.87
Matters Related to Crime & Quasi Crime	23	22	7	9	17	9	87	11.33
Welfare Rights	8	14	6	5	5	6	44	5.54
Other Files Opened	19	26	21	19	18	14	117	15.00

Month No. of Files Opened	Dec. 1971	Jan. 1972	Feb. 1972	Mar. 1972	Apr. 1972	May 1972	June 1972	July 1972	Aug. 1972	Sept. 1972	Oct. 1972	Nov. 1972	Total	& of Total
Total Files	94	144	121	109	127	189	225	210	215	154	163	184	1935	
Family Problems	26	50	47	39	34	76	94	57	68	49	55	42	637	32.72
Landlord & Tenant	9	12	9	5	15	9	22	13	25	21	13	14	167	8.63
Debts & Consumer Credit	25	25	16	20	24	39	38	18	41	17	17	22	302	15.60
Matters Related to Crime & Quasi Crime	11	11	8	6	10	20	20	63	32	32	37	45	295	15.24
Welfare Rights	4	13	13	7	11	13	13	15	15	8	4	13	129	6.67
Other File Opened	19	33	28	32	33	32	38	44	34	27	37	48	405	20.93

APPENDIX XIV

REPORT TO THE ATTORNEY GENERAL'S DEPARTMENT RE NORTHERN COURT CIRCUIT AT LA LOCHE, BUFFALO NARROWS AND ISLE A LA CROSSE

Submitted by Connie Hunt, Saskatoon Legal Assistance Clinic

Introduction

Reports have previously been submitted to the Department on the court circuits of July 31 to August 2, and August 30 to 31. This report will deal briefly with all the individual trips since that time and then will deal more generally with statistics which we have gathered, with progress made and with general observations and recommendations about the northern administration of justice.

La Loche, Sept. 5th

The Saskatoon lawyer attending on this trip was Marty Irwin of the Saskatoon City Solicitor's office. Bruce Fotheringham of Prince Albert also attended as defence counsel. It may be noted that this was the only trip since the clinic's involvement where the "anchor" person, Connie Hunt, did not attend. Mr. Irwin avoided riding into town with the R.C.M.P., who met the prosecutor at the air strip, and instead was driven in by Garth Cantrill, the probation officer. He observed that Mr. Eggum, the acting magistrate, in the traditional style of previous magistrates, went to the detachment office prior to the opening of court. Mr. Irwin was able to interview approximately 10 people at the L.C.A. Building in La Loche, then proceeded to the hall, where court had been in session for some time. He was advised that only guilty pleas had been entered up to that time. He noted that the absence of a formal docket list increased the difficulty of defence work, and in addition increased the feeling of alienation from the court which most native people seem to experience (i.e.

people present for trials and for plea sometimes wait several hours without knowing whether or not their case will go on). As frequently happens, Mr. Irwin would be at the back of the hall giving advice to someone when the magistrate would call for someone whom Mr. Irwin had previously advised. Such a person, when called up by the judge, would feel intimidated and possibly enter a guilty plea in the absence of his counsel, due to fear and insecurity. Mr. Irwin also observed that in several cases, where the Crown had lost jurisdiction due to no waiver by the presiding magistrate, neither the accused nor defence counsel would be advised of the withdrawal. Rather, the R.C.M.P. would merely make a notation to that effect on their file, then bring it to the attention of the judge. Several trials were held; unfortunately no record was kept of the nature of the cases or of their disposition. However, to the best of Mr. Irwin's recollection there were 3 trials, with 2 convictions and 1 acquittal.

Buffalo Narrows, Sept. 6th

The main problem encountered by Mr. Irwin was the refusal of the R.C.M.P. to show him any Informations without the consent of the Crown Prosecutor, who was absent for some time after court had started. No trials proceeded as there had been a loss of jurisdiction in all previous cases. Mr. Irwin observed that he was consulted by accuseds a great deal, but only after he had made a loud announcement that he was a lawyer available for consultation at no charge. He spent a substantial period of the day acting as defence counsel for a father in a child welfare hearing.

It is felt by both Mr. Irwin and the Clinic that this trip pointed up the great necessity to have at least one defence counsel who goes on every trip. Not only is this important for the point of view of establishing some routine in follow-up procedures on clients, but also from the point of view of the

communities. Native people in the north, in our estimation, fear, distrust and misunderstand the court, its procedures and its officers. This distrust unfortunately extends to defence counsel as well, due to language and cultural barriers, and due to the fact that defence counsel are not resident in the north. Clients have no reason to believe that, once having advised them, counsel will ever return again from the south. One meaningful way at present to overcome the problem is to have some consistency in the personnel involved in defence work. By this means it is possible to begin to establish rapport and trust with the communities. Obviously, the work of defence counsel is made much easier if clients exhibit trust, and northerners simply will not trust a person they meet for the first and only time.

La Loche, Oct. 2nd

Defence counsel on this trip were Bob Francis of Saskatoon and Connie Hunt of the Clinic. We spent some time interviewing people at the L.C.A. Building, after having requested the R.C.M.P. to notify us when court was about to start. One interesting occurence which again points up the advantage of being familiar with members of the community was an interview that Mr. Francis had while I was busy in another room. The client did not speak English and accordingly required an interpretor. It was later discovered that the interpretor to my knowledge is a police informer. Had Mr. Francis been aware of the fact, he could have arranged to locate another interpretor, so as to protect the accused's story. However, due to Mr. Francis' unfamiliarity with the local community and due to my absence, no adequate precautions could be taken to prevent this from happening.

We arrived at the hall to discover that court had once again started without us, and that approximately 8 guilty pleas had been taken by the magistrate.

We advised numerous other people, entered pleas, spoke to sentence and to trial dates. For the first time in our experience, we observed "not guilty" pleas being entered by people who had not consulted us first. After our arrival, and after a long string of not guilty pleas, one member of the R.C.M.P. was heard to comment sarcastically that there would likely only be not guilty pleas from now on. One accused pleaded guilty to possession of a firearm for a dangerous purpose (s. 83 C.C.). About an hour after he had left the court room, the R.C.M.P. applied for an order preventing his possession of the firearm for a period of months. The magistrate refused to make the order in the absence of the accused, who apparently was a trapper requiring the firearm for his work. The probation officer also requested the removal of the liquor prohibition term from someone's probation order, due to the fact that he felt it was an impossible term to comply with. The R.C.M.P. objected on the grounds that liquor is a serious problem in the north, and suggested that the probationer ought to attend a Clinic in order to solve his drinking problem. (There are no such clinics available in the north at present.) One trial was held for bootlegging and the accused was acquitted.

Once again we observed the phenomena of people waiting for several hours to have their case called, only to learn after 3 or 4 hours that their trial would not be proceeding due to the absence of a Crown witness.

Buffalo Narrows, Oct. 3rd.

Again, we advised numerous people, entered pleas, and spoke to sentence. There were 2 assault charges, one accused being represented by Mr. Francis, the other by Miss Hunt. The former was acquitted; the latter convicted. Mr. Francis also acted on a child welfare hearing and on a juvenile delinquent's case. Miss Hunt also acted on another juvenile delinquent's case. In addition, we

advised a man who had been picked up on a bench warrant, and had him enter pleas to two charges.

Isle a la Crosse, Oct. 4th

As usual the docket in this settlement was noticeably lighter than in the other two towns. There were no trials. The Crown withdrew approximately six informations. One accused with a break and entry charge was advised and had a trial date set.

November

A trip was made to Prince Albert. However we were unable to fly out due to bad weather, and returned to Saskatoon on Tuesday, the court sittings having been cancelled by Judge Francis.

Buffalo Narrows, Nov. 28th

Defence counsel were Ian Disbery of Saskatoon, Connie Hunt of the Clinic, and Dave McKeague a 3rd year law student associated with the Clinic. Judge Francis initially announced that free legal counsel were available for consultation. We spent what has become a routine day in court advising on pleas, speaking to sentence, setting trial dates. Although, as usual, we had several cases upon which we were prepared to proceed to trial, the Crown in most of them either withdrew or did not have their witnesses available. One case proceeded with a guilty plea being entered on one charge and the other charge being withdrawn by the Crown. A child welfare case went ahead. A not infrequent situation arose where the accused, without having spoken to counsel, pleaded guilty to a s. 245(2) charge (assault causing bodily harm). Two other charges, both under s. 245(1) common assault, were adjourned so that the accused could

speak to counsel. In discussing his charges with him, it became apparent that a good defence was available to him on the s. 245(2) charge. Accordingly, an application was made to withdraw his guilty plea and enter a not guilty plea. The application was granted by the magistrate.

Isle a la Crosse, Nov. 29th

Due to poor flying conditions and the fact that the ferry at Buffalo Narrows was out of commission, court adjourned in Isle a la Crosse about 3 hours later than scheduled. The Crown withdrew on all of 3 cases which were to proceed. One encounter we had here exemplifies the incredible problem facing the administration of justice in the north. The accused was a man of about 60 who had an extremely limited knowledge of English. He approached us for advice with his interpretor. He produced documents relating to a charge under the Liquor Act, which to my personal knowledge had been disposed of some months before. He had no other court papers. Consultation with the Crown Prosecutor revealed that he was now being charged under s. 236 of the Criminal Code (driving while over .08). A few questions of him revealed that he had some vague recollection of being given a breathalyzer test some weeks before. He also recalled that the police had later delivered a paper to him (presumably the analyst's certificate), and had read its contents to him in English. Due to his very limited understanding of English, and due to the fact that no one else in the house understood English, he had no idea what the paper was about and later burned it. He came to court without the slightest notion of what charge he was facing. (Presumably he had also entered a "not guilty" plea in ignorance of the charge.) This matter too was withdrawn by the police, but nicely illustrates the incredible problems facing the northern courts.

La Loche, Dec. 4th

Defence counsel were Bob Finley of Saskatoon and Connie Hunt of the Clinic. We faced an extremely long docket as there had been no court for two months. Judge Francis announced the availability of free counsel. It was interesting to note that several accused who spoke no English appeared with the police informant as interpretor, and all entered guilty pleas. A great number of accused were not present as they were out on their traplines. Some in addition had not been served again since the cancellation of court the month before and accordingly were not present. We spoke to sentence on behalf of one accused who insisted on pleading guilty to a break and entry charge despite our advice to the contrary, because he wished to go to a job in Hay River. In passing sentence, the accused's record was produced, which showed previous convictions. As we had previously advised the accused on another matter to which he also insisted on pleading guilty contrary to our advice, we were able to draw to the court's attention the propensity of the accused to enter guilty pleas in order to "get it over with". This factor was taken into consideration by the court in passing sentence in this particular case. However, the situation leads one to wonder how often such factors evade the consideration of the court in the north.

The trial of one accused, in connection with two break and entry charges, proceeded intermittently throughout the day because the Crown witnesses were expert police officers from Prince Albert who had come to La Loche on three separate occasions to testify. Late in the evening, at the conclusion of the docket, the matter was disposed of with the accused entering a guilty plea on one charge and the Crown withdrawing on the other.

For the first time, on this trip, we were approached by a person alleging a beating up on herself by a member of the R.C.M.P. force, and seeking

legal advice as to available legal remedies. Extensive discussions were held with the complainant and with witnesses who could corroborate her story. She subsequently decided however not to lay an information against the policeman or to request an investigation of police behaviour.

Buffalo Narrows, Dec. 5th

Initially three scheduled trials did not proceed due to Crown withdrawal or dismissal on preliminary motions in regard to defective informations. Two trials proceeded, with a conviction on one charge and a reserved judgment on the other (later, when judgment was given, the accused was acquitted).

We were also approached by two individuals for advice on civil legal matters. These involved disputes over marital property, advice regarding an assault by a husband, divorce and a forged cheque.

La Loche, Dec. 6th

As there was a preliminary enquiry being conducted in Buffalo Narrows with the accused represented by a Prince Albert lawyer, both defence counsel from Saskatoon travelled to La Loche to speak to the upgrading course, at the invitation of the teacher Mickey Classen. The first few hours were spent in general discussion with the class members talking about individual encounters they had had with the courts and general citizens' rights, such as the right to refuse to take a blood test. Complaints were aired by the class members about unfair charges which had been laid against them by the police, to which they had pleaded guilty. It became apparent, however, that we were not very effectively dealing with their total incomprehension of court concepts due to their reticence, the language barrier and our tendency to speak in words and concepts too complicated for their understanding. Accordingly, in our second session with the class, we

adopted a new approach. Having realized that, in spite of the fact that a large portion of the community has been attending court sessions every month for some time, the entire court p cedure is still a very confusing and illogical mystery to them, we attempted by means of role playing conducted in Chipewayen to convey to them the procedures that are built into the court system for the protection of the accused and also the mechanical workings of some of those procedures. We wished to demonstrate the right to request an interpretor if you feel uncomfortable in the language of the court, the right to request legal advice before entering a plea, and the right to "speak to sentence" or give your version of the facts even if you plead guilty. To illustrate these principles, we portrayed the reversal of the normal La Loche court situation. Members of the class played the role of judge, policeman and interpretor, with one of the lawyers playing the accused. The judge was coached in English by the other lawyer as to what a real judge would say, and then the court room scene was played in the chipewayen language. The English accused, who could not understand what the judge was saying to him at his insistence was provided with both an interpretor and legal counsel. After having entered a guilty plea, however, the accused also gave his version of the facts surrounding the charge, being notably different than the policeman's. (We had to wonder whether or not we had successfully made our point, however, the Chipewayen judge in sentencing the accused to 3 months delivered a speech in which he stated that when you hit a policeman, no matter why you did it, you always had to go to jail.) We continued with two other plays, exhibiting other basic concepts such as making an election. The response of the class was extremely good, and we left the school feeling for the first time we had dealt with native people who really understood what we were trying to show them.

Buffalo Narrows, Jan. 4th/73

Defence counsel were Dave Wooff of Saskatoon and Connie Hunt of the Clinic. As usual, several scheduled trials did not proceed due to the non-appearance of the accused or the unavailability of Crown witnesses. One case, which has been pending since July, was successfully adjourned again, despite a defence motion for dismissal on non-prosecution. Of the one trial which did go ahead, the accused was acquitted.

La Loche, Jan. 5th/73

No trials proceeded. Over half of the accused who were to be present for entering plea were not present during the first hour or so that court was on. We entered pleas on behalf of many persons, set trial dates and spoke to sentence. One interesting occurrence involved an accused who was sentenced to two 10-day jail terms. The probation officer, who came in late, upon learning of the sentence, requested a reconsideration of it by the magistrate. Apparently the accused was enrolled in the upgrading course and was supporting his family with that income. If he were to be absent for 20 days for any reason except illness, he would be removed from the course. Although the accused was aware of this, he lacked the courage to mention it to the magistrate himself. Upon being apprised of the situation and learning from the teacher that the accused was a conscientious student, the sentence was altered to be served on weekends. This again illustrates the incredible need in many cases for native accused persons in the north to have an advocate.

La Loche, Jan. 17th

Defence counsel for this trip were Ian Disbery and Ken Stevenson of Saskatoon, and Connie Hunt of the Clinic. The entire day was spent going

through the docket to set trial dates for a large backlog of contested cases, advising accused persons and speaking to sentence. Although there were six contested cases scheduled for trial, none of them proceeded. In one case the Crown withdrew, in one case a plea was changed to guilty, and in four cases the accused did not appear. We spent the evening attending a Metis Society meeting where president Jimmy Sinclair was the guest speaker, and where there was a fairly extensive discussion of the inadequacies of the judicial system in the north. Note was taken of the enormous liquor problem, of the fact that $150,000 is being spent to construct a new jail in La Loche, and of the absence of alcohol rehabilitation centres in the area.

La Loche, Jan. 18th

Of the trials which were scheduled, five proceeded. Of these there were four acquittals and one conviction. In one case where the charge was dismissed, the accused represented himself, and the R.C.M.P. corporal represented the Crown. Two accused were not present, one accused changed his plea, and in one case the Crown withdrew the information. We were also approached for advice on an alleged police assault, and for advice on behalf of an inmate in Prince Albert wishing to appeal his sentence of applying for parole.

La Loche and Isle a la Crosse, Jan. 19th

In La Loche, the Crown withdrew one charge, another trial resulted in an acquittal, and in the third trial judgment was reserved on a preliminary motion to dismiss.

In Isle a la Crosse, we advised numerous individuals and spoke to sentence; the only contested case resulted in an acquittal. We were also approached by an individual for advice on a civil matter involving a contract and property question.

Statistics - see Appendix A

Although no attempt can be made here to pretend that the statistics which we have gathered to date were collected by sophisticated techniques or even illustrate with great precision the possible character of defence work in the north, we offer them as a modest attempt to fill a present void of information on the subject. It must be born in mind that we initially considered our work in the north to be of even a more temporary nature that it has turned out to be, and accordingly, at first, we were less than meticulous in the matter of keeping statistics. In addition, the extremely hectic nature of defence work on the days when we are present in the towns makes it extremely difficult to keep a precise count on the nature of charges, the number of people advised, etc. Furthermore, the initial encounter with an accused is very often extremely brief, e.g. for 5 minutes in between two other cases, and as a result some accuseds, if they never seek us out again at the court, tend to simply "disappear" from our records. It can, however, be stated without a doubt that the statistics presented with this report represent the tip of a gigantic iceberg. Many more people than we have a definite record of have been advised by us, and many of those will have later changed their plea from not guilty to guilty, frequently because they lose courage to oppose the police, because they don't trust us, or because they grow weary of awaiting the disposition of their case. On occasion, as well, the police may decide to withdraw charges after a not guilty plea has been entered, may so inform the accused during the weeks before the court sits, and he may quietly drop out of our records in this way as well. It is safe to say, however, that we never lose sight of a person who pleads not guilty and whose case actually goes to trial.

So, with all their limitations, we present to you these statistics which we hope can provide to you some idea of the extent of our work over the

past few months. Although we have no comparable statistics from urban and/or southern centres, and cannot therefore draw any precise analogies between the disposition of cases in the different cases, discussions which we have had with lawyers who do considerable work in the criminal courts in other centres would indicate that we have had notable success in our work, i.e. that our rate of acquittal or Crown withdrawal is considerably higher in the north than in other places. This confirms our belief that some policemen in certain northern areas tend to lay charges rather indiscriminately, only to be forced to withdraw if the case is contested or to lose at trial due to inadequate evidence. We believe that this stems from the propensity of native people, who fear and misunderstand the courts, to plead guilty in the absence of legal counsel, regardless of their guilt. It will require much time and education before many of them accept that it is their right to enter a not guilty plea if they would like the Crown to prove its case.

One other point about our statistics: it has been virtually impossible for us to keep any meaningful record of what happens to people before the court who do not seek our advice. Therefore our records give no indication whatsoever of the many many people who proceed before the magistrate often not speaking English or understanding the charge, and plead guilty to minor liquor offences and less serious criminal offences. (Judge Frances now encourages those facing more serious charges to seek the benefit of the available legal counsel.) In this respect it must be admitted that our available statistics cannot possibly give a complete picture of the total situation in the north.

General Observations

Statistics show us that our prisons are full of a shockingly disproportionate number of native people. Simply stated, we are puting our native

citizens in jail and keeping them there. Why?

It is our firm belief that this is the case not because native people are inherently more criminal than we are, but because of selective law enforcement and a disturbing mistreatment of native people by the courts. We are not suggesting that this occurs necessarily by the design of white society, but arises from many complicated factors in the white-native cultural clash.

We accept the proposition that all laws must be applied equally to all segments of society. But this can never occur if the present system of delivery of legal services continues. Most native people in the north never have access to a lawyer at pesent. More importantly, if they do, they are probably just as afraid of him as they are of the police and the judge. They probably do not understand him, they probably do not trust him and worst of all we are certain that in the majority of cases they have no understanding whatsoever of the mechanics of the whole process which brought them into court. This problem was so nicely illustrated by a 16 year old boy in Buffalo Narrows who we defended on a break and entry charge. Out in the hall before the start of trial, he asked us why his friends, who had been present with him at the scene of the crime on the night in question, and who had been subpoened as Crown witnesses, were present at Court. We explained to him that they, along with a police officer, would be telling their story to the judge. "You mean," he asked us, "that there are going to be three of them, all against me?" We attempted to explain to him that they were only going to tell the truth and that their stories might even be helpful to his case (which, as it turned out, they were). However, his reaction represented the feelings we have encountered in many other native clients.

The problems facing us in carrying on this work in the present limited way are legion. Our interviewing facilities are non-existent. We use either someone's car in front of the court, if there is one available, or try to find

some small unoccupied corner of the hall in which to speak to our clients. Needless to say, we are never assured the privacy which is essential to the confidentiality of a solicitor-client relationship. We arrive in town just before court starts and accordingly have no time at all to contact our clients in advance of court to make sure they will be there, or to interview witnesses or to arrange for the certain presence of witnesses. We feel that the fact that we arrive and leave with the judge and the prosecutor, although for economically sound reasons, does nothing to bridge the credibility gap we presently face (despite our concerted effort to avoid all appearances of complicity with the police while we are in town).

The biggest problem we face, as defence lawyers, and that all members of the legal system in Saskatchewan face, is the cultural gap between native society and white man's courts. This is manifested in the apparent confusion which the native accused exhibits in court, his fear and intimidation, and his general disregard for the whole court procedure because it simply is not relevant to his life (on occasion as many as half the accused listed on the police docket are not present, because they lack transportation from some outlying community, because they have gone to Hay River for a temporary fishing job, or because they are out of town on their trapline). One of the Saskatoon lawyers recently put it so nicely when he commented that it is really inhuman that we force people to submit to a complicated process that they simply don't comprehend. (This comment arose out of a trial where he defended an accused on a charge of resisting arreat. The Crown and defense counsel and the Judge became involved in a lengthy and facsinating discussion about a legal point which arose. Eventually the judgment was reserved; and the accused approached the lawyer asking if he was now free to leave. Only after about fifteen

minutes of concerted effort were we able to explain to him that the case was too complicated for the judge to decide the issue that day and that we wouldn't know for about a month whether or not he was acquitted.) The accused had sat through a two hour trial with absolutely no conception of what anybody was talking about. Bearing in mind this total lack of comprehension about what is happening in the court, plus the fact that time to most people in the North has very little importance, it is not surprising to have an accused arrive an hour after court has begun, wait for another hour in the court, then leave if his case hasn't been called yet. This problem is inevitable in the absence of a formal docket posted on the wall and in light of the generally long dockets in the Magistrate's Courts. The usual result is that a bench warrant must be issued to preserve jurisdiction and the case may drag on for another two or three months. One elderly accused who lived on a reserve some distance away from the court related how he had made three trips into town for his case, only to keep having it put off. He stated that he wasn't going to bother going again and one could hardly blame him.

It is unfortunate indeed that many R.C.M.P. members, who admittedly have an extremely difficult task, appear to be of the view that the native people ought not to have access to legal counsel. This is exhibited by the frequent cases we encounter where the accused has been urged by a policeman to enter a quilty plea, by the fact that certain police have indicated privately to defense counsel that a particular accused has decided to change a not quilty plea (when the accused later denies this vehemently to his lawyer) and by the obvious hostility of frustration shown by some police members when a number of not guilty pleas are entered in a particular docket. Some policemen are genuinely concerned about the accused and will request a lawyer to speak to the accused in a very serious matter, but others take a very different approach to lesser criminal charges, even if the accused is a young person with

no previous record. This over zealousness has manifested itself in a typical case where a seventeen year old was charged with contributing to juvenile delinquency where he allegedly handed a bottle of beer to a fifteen year old. In order to prosecute the case, a witness had to be brought in from the extreme southeast corner of the province, several hundred miles away. Such antics lead one to wonder whether the police are genuinely interested in maintaining the social control in the community, or whether they are simply concerned about collecting as many convictions as possible. The calibre of crown evidence in some cases also leads one to the same conclusion.

We have recently also been becoming involved in a number of civil matters. Here the problems which face the administration of justice in the north take on a slightly different light, but are legion as well. The informality with which people deal with their land (as compared to white people) presents real difficulties for a white lawyer who has been steeped in the importance of proper registration of all transactions. Furthermore, one is constantly faced with the thorny question as to whether we should even be introducing traditional legal analyses of these kinds of problems in a culture which simply doesn't operate in accordance with traditional legal principles. The non-accessibility of high courts also poses very serious problems to a lawyer who realizes that his ultimate remedy is to litigate. Negotiation is often an ineffective tool when the opposing party lives in an isolated community, possibly cannot read English and probably will disregard attempts at a settlement anyway because he feels very secure in his isolated world. When litigation becomes the final resort, almost all clients lack the resources with which to attend at the nearest judicial centre, which is several hundred miles away. Distance in the civil area of law also poses severe problems for lawyering, because of the limited time we have available in a particular

community, and/ because the temporary transiency of our clients, makes them difficult to contact with as much frequency as is sometimes required. Manifest as well are the problems of effectively assisting people in dealing with their grievances against governmental agencies. The chief agency, welfare, is readily available but no formal appeal procedures appear to operate in these small settlements, as they do in the large urban areas. In addition, one is constantly faced with the ever present cultural conflict, which certainly rears its head when a white welfare worker is working with a native client.

The foregoing has been an attempt to bring to light, some of the incredible difficulties which we have faced and experienced in our work in the north. It must be mentioned that words alone, in our opinion at any rate, are a very limited way of communicating the atmosphere that exists between the law and native northerners. It is trite, however, to identify problems without proposing workable solutions (although, suggesting solutions to northern problems is a Herculian task).

A flexible and experimental attitude must be used when our Society begins to attempt to resolve some of the problems which presently exist in relation to law in the North. Experience has shown us that we have been eminently unsuccessful in bringing education to the North, again, not necessarily by design but simply by inexperience and a misunderstanding of the culture and of its needs. Reactions which we have heard from natives suggest as well that little has been gained by moving the entire administration of the North to La Ronge via D.N.S. Government people are still situated in one central locality, with a meaningless amount of contact with outlying areas and a resultant inability to recognize and relate to community problems. Accordingly, we suggest that lawyers in the North will have a great deal of learning to do and that the progress must be cautious and extremely flexible, ready to adapt

to new experiences to learn from them and to change course if it appears that we are moving in the wrong direction.

If native prople in the North are to be granted access to lawyers it is imperative that such lawyers are available at all times and not only one day a month. Our experience points up the futility of, for example, a a lawyer from Prince Albert or Saskatoon, being made available only on court days. Although such a solution is admittedly better than nothing, we are still drawn to the conclusion that it is not very much better than nothing. The snowballing caseload on our northern circuit confirms the experience that all lawyers dealing with underprivilaged groups have had, namely, that such a population is made up of people at various levels of awareness and that it is a long and tiring process to attempt to raise the entire population to a desirable standard of awareness of their rights. Certainly we have found that initially the people who approached us for help were ones who could speak English and who were fairly conversant (or accultured to) white society. Gradually we are progressing to the point where we are invited to the homes of people who do not speak English and who have never been to the south. We feel that it is an impossibility for a "once-a-month" lawyer to gain enough rapport in the community to break through all the built-in barriers. It would be highly desirable for Northern lawyers to learn the native language as well, so that communication with non-English speaking clients can be improved. We also consider it essential that Northern lawyers retain their traditional independence from the government. Huge philosophical problems appear when a lawyer, who historically as an officer of the Court is also in a position to act as "watch-dog", identifies injustices being perpetuated by government employees and agencies, and feels that in the interests of his clients, he must attack those injustices. As a government employer, he would also

evidently be faced with a credibility gap between himself and the native community, who in some instances at any rate, have little regard for the actions of certain government agencies. Furthermore, it is imperative, as has already been indicated, that the lawyer be in a position to develop rapport between himself and the native community. This simply cannot happen if the community recognizes him as a government employee.

The "administration vs. field experience" problems facing D.N.S. which have been alluded to, lead the writer to the conclusion that even placing a group of lawyers in a Northern Centre will create difficulties in terms of gaining the trust of the community. It is suggested, therefore, that in communities where it is feasible (such as the La Loche - Buffalo Narrows - Ile a la Crosse circuits), a resident lawyer should be placed so as to ensure immediate accessibility. Although admittedly this approach is not available for all northern towns, it should be used wherever possible.

Furthermore, it is very important that communities be given a sincere opportunity to be involved in the planning and operation of their legal services. In certain communities there are at present many people who are very interested in legal services and who have concrete contributions to make in the delivery of legal services. Native people, in addition, could prove invaluable in the effectiveness of a legal scheme through their participation as interpretors and as court workers, both in the many isolated communities where a resident lawyer is an obvious impossibility and also in the larger centres.

In conjunction with making lawyers available to people who require their help, there must be developed a new and more positive approach to sentencing, law enforcement and rehabilitation. We consider it ludicrous that $150,000.00 is presently being spent to construct a new jail in La Loche. Doubtlessly, the new facility will be largely utilized to incarcerate intox-

icated persons overnight. Surely a more sane approach to the problem of liquor would be to develop rehabiliation of and counselling services in the home area of those with liquor problems. Law enforcement as well ought to be re-evaluated. It is absurd that in La Loche residents are charged with bootlegging one or two bottles of beer, convicted and then faced with the minimum fine of $200.00. The only way they can afford to pay such a fine is to go into bootlegging in a more professional way. The more sensible solution to the problem is the construction of a liquor outlet in the town where so many bootlegging offenses take place. An extremely technical approach to law enforcement will not reduce the crime rate in Northern towns, it will merely maintain our high rate of native incarceration.

SUMMARY

This report has left countless things unsaid, but it is hoped that it will help to shed some faint light on problems and possible solutions in the Northern administration of justice. It is obvious that there is neither a simple or a single solution to the difficulties. However, up until now, essentially no attempt has been made to solve the problems. It must be stated as well, that the work that the Saskatoon Legal Assistance Clinic has done to date, in the three Northern towns is rapidly reaching crisis proportions, that is, it is quickly developing into a heavier caseload than we can possibly handle on the present part-time and temporary basis. It is hoped that the matter will be resolved shortly with the introduction of a permanent scheme for delivery of legal services into the North.

SASKATOON LEGAL ASSISTANCE CLINIC SOCIETY

Per: Connie Hunt
Connie Hunt

February 21, 1973.

APPENDIX A

Place	Charge	Date first interviewed	Subsequent Court Appearances	Disposition
La Loche	B. & E.	Dec. 4/72	Accused insisted on pleading guilty despite contrary advice. Spoke to sentence.	3 mos. suspended sentence. Dec. 4/72
Buffalo Narrows	S. 234 C.C.	Dec. 5/72	Trial Dec. 5/72. Rep. by R. Finley	Convicted Dec. 5/72
Buffalo Narrows	S. 236 C.C.	Dec. 5/72	Trial Dec. 5/72 Rep. by C. Hunt	Acquitted Jan. 17/73
La Loche	S. 236 C.C.	Dec. 4/72	Plea guilty. Rep. by R. Finley.	Guilty, Dec. 4/72
Buffalo Narrows	Juvenile Delinquency Act	Nov. 28/72	Plea guilty. Rep. by D. McKeague.	Guilty, Nov. 28/72.
Isle a la Crosse	S. 236 C.C.	Nov. 29/72	Rep. by I. Disbery	Crown withdrew Nov. 29/72
Isle a la Crosse	S. 245(1) C.C. S. 86 C.C.	Aug. 22/72	Set for trial Aug. 31/72	No record of disposition
Buffalo Narrows	S. 117(1)(a) C.C.	July /72	Set for trial Sept. 6/72	Guilty plea Sept. 6/72
La Loche	S. 307(1) C.C.	July /72	Preliminary set for Aug. 30/72	Crown withdrew
Buffalo Narrows	Juvenile Delinquency Act	Aug. 23/72	Trial set for Sept. 6/72	Crown withdrew
Buffalo Narrows	Juvenile Delinquency Act	Aug. 23/72	Trial set for Sept. 6/72	Crown withdrew
Isle a la Crosse	89(3) of Liquor Act	Aug. 23/72	Trial set for Oct. 10/72	Changed plea to guilty, Nov. 29/72
La Loche	89(3) of Liquor Act	Aug. 24/72	Trial set for Sept. 6/72	Changed plea to guilty, Oct. 3/72
Buffalo Narrows	101(1) Liquor Act 105(1) Liquor Act 294(a) C.C.	Aug. 23/72	Trial set for Sept. 6/72	Crown withdrew
La Loche	118(a) C.C.	Aug. 24/72	Trial set for Sept. 5/72	No record of disposition
La Loche	234 C.C. 235 C.C. 118 C.C.	Aug. 24/72	Trial set for Sept. 5/72	No record of disposition

Place	Charge	Date first interviewed	Subsequent Court Appearances	Disposition
La Loche	245(1) C.C.	Aug. 24/72	trial set for Sept. 5/72	No record of disposition
La Loche	77 of Liquor Act	Aug. 24/72	Trial set for Sept. 5/72	No record of disposition
La Loche	118 C.C.	Aug. 23/72	Trial set for Sept. 5/72	No record of disposition
La Loche	86 C.C.	Aug. 30/72	Trial set for Oct. 2/72	Changed plea to guilty.
La Loche	S. 236 C.C. S. 86 Liquor Act	July /72	Accused never returned for counsel	Guilty plea. No record dispositio Voluntary payment
La Loche	S. 245(2)	July /72	-	Crown withdrew.
La Loche	S. 82(1) Liquor Act	July /72	Trial July 31/72 Rep. by C. Hunt	Acquitted
La Loche	S. 245(1) C.C.	July /72	-	Crown withdrew
La Loche	S. 245(1) C.C.	July /72	Trial July 31/72 Rep. by D. Hnatyshyn	Convicted
La Loche	S. 101 Liquor Act	July /72	-	Changed plea to guilty.
Buffalo Narrows	S. 245(1) C.C.	July /72	For withdrawal	Crown withdrew
Buffalo Narrows	S. 245(2) C.C.	July /72	For withdrawal	Crown withdrew
Buffalo Narrows	S. 245(1) C.C.	July /72	For withdrawal	Crown withdrew
La Loche	S. 101 Liquor Act	July /72	-	No record of disposition
La Loche	S. 101 Liquor Act	July /72	-	Changed plea to guilty.
La Loche	S. 118 C.C.	July /72	-	Changed plea to guilty.
La Loche	S. 117 C.C.	July /72	-	Changed plea to guilty.
La Loche	S. 101 Liquor Act	July /72	Rep. by B. Fotheringham	Plea guilty
La Loche	S. 86 C.C.	July /72	Rep. by B. Fotheringham	Crown withdrew

Place	Charge	Date first interviewed	Subsequent Court Appearances	Disposition
La Loche	S. 82(1) Liquor Act	July /72		Crown withdrew
La Loche	S. 306(1)(a) C.C.	Aug. /72	Numerous appearances to speak to trial date	Change plea to guilty Dec. 3/72
La Loche	S. 306(1)(a) C.C.	Sept. /72	" "	Crown withdrew Dec. 3/72
Isle a la Crosse	Unknown	Dec. /72	Speak to sentence	Guilty plea.
Isle a la Crosse	S. 306 C.C.	Oct. /72	For withdrawal	Crown withdrew Nov. 28/72
La Loche	S. 294 C.C.	Oct. /72	Speak to sentence	Guilty plea
Buffalo Narrows	S. 240(4) C.C.	Oct. /72	For withdrawal	Crown withdrew Nov. 28/72
Buffalo Narrows	S. 118 C.C.	Oct. /72	Speak to sentence	Guilty plea Nov. 28/72
La Loche	S. 236 C.C.	Dec. /72	Enter not guilty plea Jan. '73. Trial date set Apr. '73.	
La Loche	S. 245(2) C.C.	July /72		No record of disposition.
La Loche	Complaint re R.C.M.P.			
La Loche	S. 240(4) C.C.	July /72		Guilty plea Jan. 5/73
Buffalo Narrows	S. 236 C.C.	Nov. /72	For withdrawal	Crown withdrew Jan. /73
La Loche	S. 82(1) Liquor Act	July /72	Trial Jan. 18/73 Rep. by C. Hunt	Acquitted
La Loche	S. 86 C.C.	Jan. /72	Trial Jan. 18/73 Rep. by K. Stevenson	Acquitted
La Loche	S. 245(2) C.C.	July /72	Trial Jan. 19/73 Rep. by I. Disbery	Acquitted
Buffalo Narrows	S. 245(2) C.C.	Oct. /72	Trial Oct. '72 Rep by R.P. Francis	Acquitted
Buffalo Narrows	S. 245(2) C.C.	Oct. /72	Trial Oct. '72 Rep. by C. Hunt	Convicted
La Loche	S. 171(a)(i) C.C.	Oct. /72		No record of disposition

Place	Charge	Date first interviewed	Subsequent Court Appearances	Disposition
La Loche	S. 245(2) C.C.	Dec. /72	Spoke to sentence Rep. by D. Wooff	Guilty plea
La Loche	S. 245(1) C.C.	Dec. /72	For withdrawal	Crown withdrew Jan. 17/73
La Loche	S. 388(1) C.C.	Dec. /72		Changed plea Jan. 18/73
La Loche	S. 83(1) Liquor Act	Aug. /72	For withdrawal	Crown withdrew Jan. 18/73
La Loche	S. 101(8) Liquor Act	Sept./72	For withdrawal	Crown withdrew
La Loche	S. 101(8) Liquor Act	Sept./72	For withdrawal	Crown withdrew
La Loche	S. 101(8) Liquor Act	Sept./72	For withdrawal	Crown withdrew
La Loche	S. 101(8) Liquor Act	Sept./72	For withdrawal	Guilty plea.
La Loche	S. 82(1) Liquor Act	July /72	Trial July /72 Rep. by C. Hunt	Convicted
La Loche	S. 82(1) Liquor Act	Aug. /72	Trial Sept. /72 Rep. by C. Hunt	Convicted
La Loche	Complaint re R.C.M.P.			
Isle a la Crosse	Contract			
La Loche	S. 117 C.C.	Jan. 5/73.	Re sentence	Guilty plea
La Loche	S. 246 C.C.	Jan. 5/73	Re sentence	Guilty plea
La Loche	S. 331(1)(a)	Jan. 5/73	Trial set for Apr.5/73	
Buffalo Narrows	Re Indian status Re marital property			
Buffalo Narrows	Re divorce Re forged cheque	Nov. /72		
La Loche	Re parole appeal sentence	Jan. /73		
La Loche	S. 83(1) Liquor Act	Sept. /72	Speak to sentence	Guilty plea Jan. /73
La Loche	S. 236 C.C.	Dec. /72	Speak to sentence	Guilty plea
Buffalo Narrows	Child welfare hearing	Sept. /72	Sept., Oct. Nov. /72	

Place	Charge	Date first interviewed	Subsequent Court Appearances	Disposition
Buffalo Narrows	Juvenile Delinquency Act	Oct. /72	Oct., Nov. /72	Guilty plea
Buffalo Narrows	S. 245(1)	Nov. /72	Set for trial Jan./73	
Buffalo Narrows	S. 245(1)	Nov. /72	Set for trial Jan./73	
Buffalo Narrows	S. 245(1)	Nov. /72	Set for trial Jan./73	
Buffalo Narrows	Breach of probation	Nov. /72	Speak to sentence	Guilty plea
Buffalo Narrows	S. 294 C.C.	Nov. /72	Trial set for Jan./73	
Buffalo Narrows	Breach of probation	Nov. /72	Trial set for Jan./73	
Buffalo Narrows	S. 294 C.C.	Nov. /72	Trial set for Jan./73	
Buffalo Narrows	Willful damage	Nov. /72	Trial set for Jan./73	
Buffalo Narrows	Juvenile Delinquency Act	July /72	Trial set for Jan./73	
Buffalo Narrows	S. 89(3) Liquor Act	Jan. 4/73	Trial set for Feb./73	
Buffalo Narrows	S. 388(1) C.C.	Jan. 4/73	Trial set for Feb./73	
La Loche	S. 303 C.C.	Jan. 18/73	Trial date set	
La Loche	S. 245(2)(a) C.C.	Sept. /72	Trial date set	
La Loche	S. 246(2)(a)	Jan. /73	Trial date set	
La Loche	S. 149(1) C.C.	Jan. /73	Trial date set	
La Loche	S. 228(a) C.C.	Jan. /73	Trial date set	
La Loche	S. 83 C.C.	Jan. /73	Trial date set	
Isle a la Crosse	S. 117(a) C.C.	Jan. 19/73	Trial Jan. 19/73 Rep. by K. Stevenson	Acquitted
Isle a la Crosse	B. & E.	Jan. 19/73	Speak to sentence Rep. by K. Stevenson	Guilty plea
Isle a la Crosse	S. 306(1)(b) C.C.	Jan. 19/73	Trial date set	
Isle a la Crosse	S. 245(1) C.C.	Jan. 19/73	Trial date set	
Isle a la Crosse	S. 245(1) C.C.	Jan. 19/73	Trial date set	
Isle a la Crosse	S. 306(1)(a) C.C.	Jan. 19/73	Trial date set	

Place	Charge	Date first interviewed	Subsequent Court Appearances	Disposition
La Loche	S. 77 Liquor Act	July /72	Trial date set	
La Loche	S. 118(a) C.C.	July /72	Trial date set	
La Loche	S. 245(2) C.C.	Dec. /72	Trial date set	
La Loche	S. 246(2)(a) C.C.	Dec. /72	Trial date set	
La Loche	S. 245(2)	Dec. /72	Trial date set	
Isle a la Crosse	Indian Act	July /72	For withdrawal	Crown withdrew Oct. /72
Isle a la Crosse	Indian Act	July /72		
Isle a la Crosse	Indian Act	July /72		
Isle a la Crosse	Indian Act	July /72		
La Loche	S. 83(1) Liquor Act	July /72	Trial Oct. 2/72 Rep. by C. Hunt	Acquitted
La Loche	S. 245(1) C.C.	Oct. 2/72	Speak to sentence	Guilty plea
La Loche	?	Oct. 2/72	Trial date set.	

APPENDIX XV

PROPOSED BUDGET FOR NORTHERN DIVISION

GENERAL

The recommendations of the committee with respect to the northern division embrace the appointment of community legal service workers. In the opinion of the committee, to a significant extent the functions of these workers would fall within the meaning of the term "welfare services" as used in the Canada Assistance Plan Act. If that be so, then under section 4 of that statute it would be open to the provincial government to seek an agreement with the Governor in Council to make provision for federal contribution in respect of the costs to the province of employing such community legal service workers. In taking this position, the committee notes that the above term includes what the statute calls "community development services". With the statutory definition of that term in mind, the committee suggests that the function of a community legal service worker would significantly involve assisting "residents (of the north) in participating in the improvement of the social and economic conditions of their communities for the purposes of preventing, lessening or removing the causes and effects of poverty, child neglect or dependence on public assistance". In saying this the committee is mindful of its view that the kind of legal aid plan which it is proposing may operate, in proper cases, as a vehicle for social change through its educational and law reform activities. It also has in mind that, particularly through the educational function, the system should result in poor persons in the north becoming more self-reliant. Upon that being achieved it would seem that it would have a direct effect in assisting in removing the "causes and effects of poverty". Accordingly, in considering the proposed budget which follows, the committee suggests

that the possibility of federal contribution (quite apart from, and in addition to, assistance coming under the proposal to cost share criminal legal aid) under the Canada Assistance Plan Act should be kept squarely in mind.

The committee also suggests that there is a further source of federal funding which the province could properly look to. It has to do with the provision of legal aid to native people of registered status. This possibility was raised by the Federation of Saskatchewan Indians in its brief to the committee. This takes one to section 11 of the Canada Assistance Plan Act. That section reads:

> "The Minister ... charged with the administration of the Indian Act may, with the approval of the Governor in Council, enter into an agreement with a province with respect to the extension of provincial welfare programs to Indians to whom this part applies and for the payment by Canada to the province of any portion of the costs to the province of extending provincial welfare programs to such Indians."

The implications of this section of the statute, of course, go beyond the function of community legal service workers and extend to all of the services which would be available under the plan whith the committee recommends to such citizens in the north.

The committee also suggests that, as far as the cost of training community legal service workers is concerned, the federal Departments of Manpower and Justice might properly be called on to give financial assistance.

PROPOSED BUDGET

In the budget which follows, one item has been left out. That is the cost of providing accommodation for the office of the La Ronge Clinic.

SALARIES

Director	$20,000.00	
* Northern pay	2,000.00	
Lawyer	15,000.00	
Northern pay	2,000.00	
Lawyer	13,000.00	
Northern pay	2,000.00	
Articling student	6,000.00	
Northern pay	2,000.00	
Summer student	2,000.00	
Summer student	2,000.00	
* Office manager	9,000.00	
Northern pay	1,000.00	
Senior legal steno	6,600.00	
Northern pay	1,000.00	
1 clerk steno	5,500.00	
Northern pay	1,000.00	
1 clerk steno	5,500.00	
Northern pay	1,000.00	
Staff benefits	3,000.00	$ 98,200.00

AIRCRAFT

Lease	$18,000.00	
Pilot	12,000.00	
Maintenance & pilots' food & cost away from home	5,000.00	$ 35,000.00

COMMUNITY LEGAL SERVICE WORKERS

6 community legal service workers ($600 per month) $7,200 x 6	$43,200.00

Community legal service workers' premises ($100 per month) $1,200 x 6	$ 7,200.00	
Community legal service workers' budget (travel etc.) $3,000 x 6	18,000.00	
Staff benefits	1,800.00	$ 69,600.00
* COMMUNICATIONS		
Telephone		2,000.00
LIBRARY LEASE		1,500.00
OFFICE SUPPLIES		
4 electric typewriters - lease	$ 1,300.00	
4 secretarial desks - lease	300.00	
4 lawyers' desks - lease	300.00	
3 dictaphone transcribers - lease	600.00	
3 dictaphone recorders - lease	600.00	
1 dictaphone portable recorder - lease	200.00	
1 adding machine - lease	70.00	
1 tape recorder - lease	100.00	
1 Xerox unit and supplies	1,500.00	
20 stacking chairs	300.00	
Book shelves	500.00	
1 V.T.R. unit (rental)		
Filing cabinets	200.00	
Garbage cans	20.00	
Maintenance, cleaning and equipment	25.00	
Coffee maker and cups	30.00	
3 winter survival kits	500.00	
Office paper and supplies	1,500.00	

Legal forms and interview forms	$ 700.00	$ 9,345.00
TRANSPORTATION, ACCOMMODATION & SUSTENANCE		
Automobile mileage	$ 500.00	
Flights to southern areas then automobile - 20 trips x $100	2,000.00	
Accommodations and sustenance (includes sustenance etc. while away from base in north)	3,000.00	$ 5,500.00
MISC. (or unpredictable expenses)		5,000.00
GRAND TOTAL		$221,645.00

* Northern pay - isolation and/or risk factor flying etc.

* Office Manager - a qualified legal secretary that has had some years of experience in handling accounts for a firm might be suitable for this position, to act as office administrator.

* Communications - no allowance is made for radio communication expense. It is hoped some arrangement can be worked out with existing facilities. If not some arrangement will be necessary.

It occurs to the committee that the government might well be able to obtain such items as office equipment, office supplies, aircraft, and other materials through its purchasing agency at greatly reduced fees. If so, this would reduce the budget as set out above.

It is to be noted that the above budget does not make any provision for housing for salaried people at La Ronge.

It is also to be noted that the proposed budget does not make any provision for the payment of the fees of private practitioners who may participate in the plan.

APPENDIX XVI

ESTIMATE OF NUMBER OF LAWYERS REQUIRED IN EACH CLINIC IN THE SOUTHERN DIVISION

The committee recommends, in its report, that a clinic be established in each of the Department of Social Service regions in the southern division.

The committee was unable to find any established formula which could be used to predict the number of lawyers required in each such clinic. That being so, the committee decided to attempt to construct a formula on the basis of the experience to date of the Saskatoon Legal Assistance Clinic. It is now in its second year of full-time operation. Its operations are limited to the city of Saskatoon. The committee decided that it would be useless merely to construct a ratio on the basis of the caseload of the clinic as against the total population of the city. Accordingly, it decided that the ratio should be based on a "welfare use" figure for the city. In arriving at that figure, the committee used three welfare groups. Those were:

(1) The number of people on provincial social assistance.

(2) The number of Indian people on federal social assistance.

(3) The number of persons receiving old age security supplemental allowances.

The total "welfare population" in the above three groups for Saskatoon is about 15,000 people. The Saskatoon Legal Assistance Clinic has a usual caseload of about 2,500 cases per year. This works out to slightly over 200 cases per month. This suggests that 15,000 persons on welfare produce about 2,500 cases or files for a legal assistance clinic in a year. This led the committee to conclude that, as an indicator, it might assume that for every

3,000 welfare recipients (in the above groups) there will be, as a broad average, 500 cases or files that come into a clinic in a year.

Figures quoted to the committee by the Law Society of Saskatchewan suggest that, from the experience in the United States of America, a clinic lawyer should handle about 500 cases a year. That is, his caseload should not be larger than this in order that he may do a proper, professional job. In accepting that figure the committee, of course, has to assume that a "case" in the United States is similar to a "case", regarded as such, by the Saskatoon Legal Assistance Clinic.

On the basis of the above, then, it may be said that every 3,000 welfare recipients, bringing in about 500 cases a year to a clinic, will require one clinic lawyer to serve them. This is the formula which the committee has used.

Having established the above formula the committee then determined the total welfare population (falling into the same three groups as above) in each of the Department of Social Service regions in the southern division. Those figures are as follows:

SWIFT CURRENT

Population (1971 census)

City	15,415
Town	17,693
Village	8,491
R.M.	31,817
Total	73,416

Sask. Assistance Plan Recipients (March 31, 1971)

City	633		
Town	866		
Village	403		
R.M.	335		
L.I.D.	1		
N.A.D.	--		
Unknown	23	Total	2,261

Indian Welfare Recipients (July 1971) Total 95

* Guaranteed Income Supplement (1971) Total 4,623

Total Welfare Recipients 6,979

* The guaranteed income supplement figures for each Department of Social Service region are only estimates. The Federal Department of National Health and Welfare only keeps figures for the province as a whole. Accordingly, no precise figures could be obtained by the committee for each region. The regional estimates were obtained as follows:

$$\frac{\text{Census population for each social service region (1971)}}{\text{Total census population for Saskatchewan (1971)}} \times \text{Total number of persons receiving G.I.S.} = \text{Estimated number of persons receiving G.I. in each social service region.}$$

MOOSE JAW

Population:	City	31,854		
	Town	9,485		
	Village	4,338		
	R.M.	25,899		
	Total	71,576		
Sask. Assistance Plan Recipients				
	City	217		
	Town	514		
	Village	284		
	L.I.D.	-		
	N.A.D.	-		
	Unknown	5	Total	1,227
Indian Welfare Recipients			Total	31
Guaranteed Income Supplement			Total	4,496
			Total Welfare Recipients	5,754

REGINA

Population:	City	139,469		
	Town	-		
	Village	-		
	R.M.	-		
	Total	139,469		
Sask. Assistance Plan Recipients				
	City	10,500		
	Town	31		
	Village	19		
	R.M.	23		
	L.I.D.	-		
	N.A.D.	-		
	Unknown	34	Total	10,607
Indian Welfare Recipients			Total	0
Guaranteed Income Supplement			Total	8,866
			Total Welfare Recipients	19,473

WEYBURN

Population:	City	17,965		
	Town	9,386		
	Village	5,559		
	R.M.	19,170		
	Total	52,080		
Sask. Assistance Plan Recipients				
	City	635		
	Town	407		
	Village	192		
	R.M.	160		
	L.I.D.	-		
	N.A.D.	-		
	Unknown	6	Total	1,400
Indian Welfare Recipients			Total	351
Guaranteed Income Supplement			Total	3,293
			Total Welfare Recipients	5,044

QU'APPELLE

Population:	City	-		
	Town	20,635		
	Village	7,753		
	R.M.	36,485		
	Total	64,873		
Sask. Assistance Plan Recipients				
	City	113		
	Town	1,020		
	Village	682		
	R.M.	462		
	L.I.D.	-		
	N.A.D.	-		
	Unknown	18	Total	2,295
Indian Welfare Recipients			Total	3,751
Guaranteed Income Supplement			Total	4,116
			Total Welfare Recipients	10,162

YORKTON

Population:	City	13,430		
	Town	17,330		
	Village	8,073		
	R.M.	34,776		
	Total	73,609		
Sask. Assistance Plan Recipients				
	City	1,507		
	Town	1,315		
	Village	819		
	R.M.	1,068		
	L.I.D.	-		
	N.A.D.	-		
	Unknown	34	Total	4,743
Indian Welfare Recipients			Total	1,514
Guaranteed Income Supplement			Total	4,623
			Total Welfare Recipients	10,880

MELFORT - TISDALE

Population:	City	-		
	Town	18,650		
	Village	2,824		
	R.M.	29,582		
	Total	51,056		
Sask. Assistance Plan Recipients				
	City	17		
	Town	1,830		
	Village	395		
	R.M.	813		
	L.I.D.	96		
	N.A.D.	13		
	Unknown	19	Total	3,183
Indian Welfare Recipients			Total	1,191
Guaranteed Income Supplement			Total	3,293
			Total Welfare Recipients	7,667

SASKATOON

Population:	City	126,449		
	Town	22,891		
	Village	8,513		
	R.M.	32,246		
	Total	190,099		
Sask. Assistance Plan Recipients				
	City	7,799		
	Town	1,761		
	Village	752		
	R.M.	672		
	L.I.D.	2		
	N.A.D.	17		
	Unknown	91	Total	11,094
Indian Welfare Recipients			Total	31
Guaranteed Income Supplement			Total	12,033
			Total Welfare Recipients	23,158

NORTH BATTLEFORD

Population:	City	16,651		
	Town	10,637		
	Village	8,155		
	R.M.	31,672		
	Total	67,464		
Sask. Assistance Plan Recipients				
	City	1,467		
	Town	877		
	Village	708		
	R.M.	783		
	L.I.D.	-		
	N.A.D.	-		
	Unknown	34	Total	3,869
Indian Welfare Recipients			Total	3,537
Guaranteed Income Supplement			Total	4,243
			Total Welfare Recipients	11,649

PRINCE ALBERT

Population:	City	28,464		
	Town	4,554		
	Village	4,518		
	R.M.	24,096		
	Total	61,632		
Sask. Assistance Plan Recipients				
	City	363		
	Town	479		
	Village	861		
	R.M.	1,048		
	L.I.D.	250		
	N.A.D.	1,878		
	Unknown	11	Total	4,090
Indian Welfare Recipients			Total	3,431
Guaranteed Income Supplement			Total	3,863
			Total Welfare Recipients	11,384

MEADOW LAKE

Population:	City	-		
	Town	3,783		
	Village	219		
	R.M.	3,303		
	Total	7,305		
Sask. Assistance Plan Recipients				
	City	26		
	Town	701		
	Village	105		
	R.M.	-		
	L.I.D.	672		
	N.A.D.	2,041		
	Unknown	23	Total	2,295
Indian Welfare Recipients			Total	888
Guaranteed Income Supplement			Total	443
			Total Welfare Recipients	3,626

Applying the above noted formula to the total welfare population, as given above, the committee arrives at the following estimates as to the number of clinic lawyers required to staff a clinic in each of the above regions:

Region	Total Welfare Recipients	Approx. No. of Lawyers
Swift Current	4,623	2
Moose Jaw	4,496	2
Regina	19,473	6
Weyburn	5,044	2
Qu'Appelle	10,162	3
Yorkton	10,880	3
Melfort	7,657	2
Saskatoon	23,158	7
North Battleford	11,649	4
Prince Albert	11,384	4
Meadow Lake	3,626	1
		36

APPENDIX XVII

ESTIMATED COST OF PROPOSED PLAN FOR SOUTHERN DIVISION

TEN CLINICS

When fully operative, the plan which the committee proposes could base a clinic in each of the ten Department of Social Service regions in the southern division.

Based on the experience of the Saskatoon Legal Assistance Clinic, the committee anticipates that it would cost about $35,000 to put one lawyer in the field. This breaks down as follows:

- 1 lawyer (salary)	$14,000
- 1 secretary (salary)	5,000
- 1 community legal service worker (salary)	6,000
- Expenses (office, travel, etc.)	10,000
	$35,000

One obvious variable is the expense item. That is, a city clinic would have a lower travel expense than a rural clinic probably would.

On the above basis, then, when ten clinics are in full operation with a staff of 36 lawyers (see Appendix XVI) the cost per year would be $1,300,000 (rounded).

THE SECRETARIAT

- Provincial Director	$ 27,000
- General Counsel	25,000
- Business Manager	15,000
- 3 secretaries	15,000

- Community development worker	$ 9,000
- Office and equipment	10,000
- Transportation	10,000
- Telephone system (zenith number, 4 telephone workers)	20,000
- Library	5,000
- Public Education	20,000
	$156,000

FEE-FOR-SERVICE COST

The committee places this (it cannot be called an estimate) at $300,000.

SUMMARY OF TOTAL COST

Ten clinics	$1,300,000
Secretariat	156,000
Fee-for-service payments	300,000
	$1,756,000

This works out to approximately $1.93 per capita.

SOURCE OF FUNDS

(a) The Department of Justice stands ready to cost share the expense of providing criminal legal aid. The total available from this source, as the committee understands it, would work out to approximately $450,000 per year.

(b) There is a large number of Indian Reservations scattered through the southern division. In that connection the committee again underscores its suggestion, contained in Appendix XV , with respect to the likelihood of being able to secure federal funds under the Canada Assistance Plan Act for the prov-

ision of legal services to native people of registered status.

(c) The committee again repeats its suggestion, made in Appendix XV that in part at least the cost of the community legal service workers could be cost shared under the Canada Assistance Plan Act.

(d) As suggested in, again, Appendix XV , the cost of training community legal service workers might well be shared with the Departments of Justice and Manpower.